

2024:PHHC:119961



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

217

CRM-M-39111-2024 (O&M)
Date of decision: 12.09.2024

Vikas Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. A. S. Sandhu, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner in FIR No. 480 dated 29.07.2023, registered under Sections 18 and 29 (*added later on*) of the NDPS Act, 1985 at Police Station Shahabad, District Kurukshetra.
2. Brief facts of the case relevant for the disposal of the present petition are that on 29.07.2023, co-accused Parvinder Singh and Harvinder Singh were apprehended by a police party and recovery of 17 kgs. of opium was effected from them. They were formally arrested at the spot. During the course of interrogation, the aforesaid co-accused disclosed that the recovered contraband was taken by them as per instructions of their owner Jugraj Singh. On the basis of the same, Jugraj Singh was also nominated as accused in this case and was arrested on 30.07.2023. During investigation, co-accused Jugraj Singh disclosed that one Sahil Vij had purchased 05 kgs. of opium from him

2024:PHHC:119961



for Rs. 5 Lakhs. The bank account records of co-accused Sahil Vig were obtained and on perusal of the same, it was found that he had transferred a sum of Rs. 32,000/- to the petitioner through UPI. Co-accused Sahil Vig disclosed the name of Umesh Paswan, who further disclosed the name of the petitioner as their accomplice. The allegations against the petitioner are that he had given 05 kgs. of opium to co-accused Umesh Paswan, which was further sold to co-accused in turn. Apprehending his arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Judge, Special Court, Kurukshetra but the same had been dismissed, vide order dated 29.07.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He has been nominated in this case on the basis of the disclosure statement suffered by aforesaid co-accused, which is not admissible in evidence. Co-accused Sahil Vig and Umesh Paswan have been granted concession of regular bail by this Court, vide orders dated 25.01.2024 and 12.02.2024, passed in CRM-M-51005-2023 and CRM-M-6424-2024, respectively. Apart from them, co-accused Jugraj Singh and Lakhwinder Singh have also been granted concession of regular bail by this Court. The recovery of alleged contraband was effected from co-accused Parvinder Singh and Harvinder Singh and subsequently no recovery has been effected. Even no recovery is to be effected from the petitioner. The petitioner is ready to join the investigation. No useful purpose would be served by detaining him in custody. Therefore, it is urged that the petition deserves to be allowed.

4. *Per contra*, learned State counsel has argued that though the

2024:PHHC:119961



petitioner has been nominated in this case on the basis of the disclosure statement suffered by the co-accused but during the course of investigation, his complicity in the commission of subject offence has been established. The petitioner was the supplier of the recovered contraband and had received drug money from co-accused Sahil Vig into his bank account against the sale of the contraband. As per call details record, he was in constant touch with co-accused Sahil Vig and Umesh Paswan. The petitioner is a drug peddler and a part of the drug racket and in order to burst the drug smuggling racket as well as for proper investigation in the matter and for effecting further recovery of contraband, if any, his custodial interrogation is must. It is, thus, argued that the petition is liable to be dismissed.

5. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The petitioner has been nominated in this case on the basis of the disclosure made by the aforesaid co-accused. The allegations against the petitioner is that he is one of the suppliers of the contraband as he had supplied 05 kgs. of opium to co-accused Umesh Paswan, who had supplied the same after adding 12 kgs. of more opium to co-accused Parvinder Singh and Harvinder Singh, who were apprehended by the police party at the spot. The total recovery of the contraband effected in this case is of 17 kgs. of opium, which obviously falls under the commercial quantity. During the course of investigation, it has been found that the petitioner was in constant touch over phone with co-accused Umesh Paswan and Sahil Vig as there were total 60 call exchanges between them. Since the quantity of the recovered contraband falls under the commercial quantity, the rigors of Section 37 of the NDPS Act

2024:PHHC:119961



would be attracted against the petitioner. So far as the plea of the petitioner seeking parity with the aforesaid co-accused, who have been granted concession of bail by this Court, is concerned, a perusal of the said orders shows that all of them have been granted concession of regular bail and not the concession of anticipatory bail. More so, while granting concession of regular bail to them, the coordinate Bench had observed that there was nothing on record in the form of CDR to show that they were in touch with the accused, from whom recovery was effected. Hence, the case of the petitioner cannot be stated to be on parity with that of the aforesaid co-accused as he is seeking grant of regular bail and there is sufficient material to show that he was in constant touch with co-accused Sahil Vig and Umesh Paswan. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest

2024:PHHC:119961



bail has been made out rather his custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

12.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No