IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

104 **CRM-M-38904-2024**
DATE OF DECISION: 09.08.2024

LASHMAN KUMAR ALIAS LACHHMAN **...PETITIONER**

Versus

STATE OF PUNJAB **... RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rhythem Bajaj, Advocate for the petitioner(s).
Mr. Rajiv Verma, DAG, Punjab.

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SANDEEP MOUDGIL, J (ORAL)

1. **Relief Sought**

The jurisdiction of this Court under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been invoked seeking the concession for the grant of anticipatory bail to the petitioner in FIR No.78 dated 10.07.2024, under Sections 15 of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Bahawala, District Fazilka.

2. Prosecution story set up in the present case as per the version in the FIR read as under :-

> *'Contents of the FIR: Station Incharge, Police Station Bahawala. Jai Hind. Today I SI along with SI Bhagwan Singh 655/Fazilka, SC Bansi Lal 863/Fazilka, SC Robin Singh 806/Fazilka, PHG Mohar Singh 6526 in a government vehicle Bolero No. PB-22K-9054 being driven by its driver PHG Radhey Sham 6714 reached Dhani of Vilalge Bishanpura for patrolling and for searching the*

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suspected persons. Then one clean shaved person from the Dhani suddenly tried to ran away towards his fodder room after seeing the Police Party to whom I SI with the help of co-officials apprehended and asked his name and address. Then he told his name as Vinod Kumar son of Hanuman resident of Dhani Bishanpura. I SI introduced him about my identity and told that I Inspector Jaswinder Singh No. 325/Fazilka is posted at Police Station Bahawala as Investigating Officer. I have a suspicion that you and the fodder lying in your Dhani is having some narcotic substance so your fodder is to be searched but you have the right under law made for the narcotic substance that you can get your fodder searched in the presence of any Magistrate or any other Gazetted Officer and they can be called on the spot. Upon which above said accused Vinod Kumar said that I have faith upon you and you can search my fodder. Upon which a Consent Memo was prepared. On the Memo above said accused Vinod Kumar appended his left thumb impression and witnesses witnessed conducting the search the in Prior same. the presence to of witness, I SI tried to join a public witness but no one found. Then I SI in the presence of witnesses started searching the fodder and also made video on E-Sakshia App. Upon conducting search, three plastic sacks were recovered from the fodder whose mouths were open and Poppy Husk was visible from it. Upon which, a computer scale was taken out from the government vehicle and weighed the first plastic sack which comes 17 Kilogram along with plastic sack and number 1 was marked over it, then weighed the second plastic sack which comes 17 Kilogram along with plastic sack and number 2 was marked over it and then weighed the third plastic sack which comes 16 Kilogram along

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with plastic sack and number 3 was marked over it. The total recovered Poppy Husk comes 50 KG. After preparing packets of all three plastics sacks, I SI stamped it with my stamp JS. Sample Stamp was prepared separately. Stamp after use was handed over to SI Bhagwan Singh. Above said accused Vinod Kumar confessed in his interrogation that his brother Sarwan Kumar and Lachhman Kumar had brought the Poppy Husk after purchasing. Upon which, accused Vinod Kumar, Sarwan Kumar and Lachhman Kumar sons of Hanuman resident of Dhani Village Bishanpura committed an offence under Section 15/61/85 of NDPS Act by keeping Poppy Husk in their possession. Upon which a Ruqa against above said accused persons was sent for registration of the case to the Police Station through PHG Mohar Singh 6526. After registering the case number be informed. Special Reports be issued. Higher officers be informed. I along with co-officials am busy in the investigation. Report under Section 42 NDPS is sent. Sd/- Jaswinder Singh, SI, PS Bahawala, Date 10.07.2024, in the area of Village Bishanpura at 02.10 PM. Today upon receiving the above said Ruqa through PHG Mohar Singh 6526 in the police station the above said case under above mentioned sections against above said accused persons namely Vinod Kumar, Sarwan Kumar and Lachhman Kumar sons of Hanuman has been registerd through CCTNS Computer and the copy of FIR along with original Ruqa is being sent to the spot through same PHG. After preparing the special reports same are sent to the Illaqa Magistrate and higher officials through SC Mandeep Singh No. 328/Fazilka. PCR Fazilka is informed through E/M.

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3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case and has been nominated as an accused on the basis of the disclosure statement suffered by co-accused-Vinod Kumar. He has strongly argued that no recovery has been made from the petitioner and whatever contraband alleged to have been recovered that is from the co-accused which is also non-commercial in nature i.e. 50 kg of Poppy husk including the first plastic sack which comes i.e. 17 kilogram along with plastic sack and number 1 was marked over it, then weighed the second plastic sack which comes 17 kilogram along with the plastic sack and number 2 was marked over it and then weighed the third plastic sack which comes 16 kilogram along with plastic sack and number 3 was marked over it.

On behalf of the State

Learned State Counsel appearing on advance notice on instructions from ASI Gurmeet Singh opposes the prayer for grant of anticipatory bail on the grounds that three persons including the petitioner who are real brothers were involved in the incident and have collectively engaged in strucking the deal, therefore, prays for dismissal of the instant petition.

4. **Analysis**

Be that as it may, on a specific query from the Court, learned State Counsel candidly informs the Court that the petitioner is

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not involved in any other case, therefore, he is not a habitual offender, otherwise also no recovery of contraband has been effected from him and whatsoever contraband has been recovered that is also non-commercial in nature which fact is not disputed by learned State Counsel. Hence, this Court finds no reason to deny the petitioner the concession of anticipatory bail wherein the petitioner has bona fide intentions and is willing to join the investigation and cooperate for furtherance of the same so that the final report can be submitted by the Investigating Agency in time.

5. **Decision**

Hence, in view of the admitted set of circumstances before this Court, the petitioner is directed to be released on anticipatory bail subject to his joining investigation and reporting to the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to the satisfaction of Arresting/Investigating Officer. The petitioner shall also abide by the terms and conditions as envisaged under Section 482(2) of BNSS of which are reproduced below :-

> *'When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*
>
> *(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
>
> *(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person*

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acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.'

However, it is made clear that in case the petitioner does not comply with the aforesaid direction of joining the investigation within one week, the order passed by this Court today shall automatically stands cancelled.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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