



103

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-43028-2024

Date of Decision: September 02, 2024

BILLU RAM**....Petitioner(s)****VERSUS****STATE OF HARYANA****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Amit Singla, Advocate
for the petitioner.

Mr. B.S. Virk, Senior DAG, Haryana.

SANDEEP MOUDGIL, J.(ORAL)**1. Relief Sought**

The jurisdiction of this Court under Section 482 Bhartiya Nagrik Suraksha Sanhita, 2023, has been invoked seeking the concession for the grant of anticipatory bail to the petitioner in FIR No.262 dated 31.07.2024 under Sections 21(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 27-A of NDPS Act added later on), registered at Police Station Bhuna District Fatehabad.

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

'To The Station House Officer Police Station Bhuna Jai Hind. Today I ASI alongwith Dayaram No. 127/ Fatehabad and SPO Karnail Singh No. 224 were present on duty with personal laptop and printer for patrolling and controlling the crime for narcotic substances at near Vita booth Fatehabad



road Bhuna with Government vehicle o. HR 22GV07805 being driven by SPO Baljeet Singh 217 and in the meanwhile the secret informed came present and informed me ASI that Sukhwinder @ Kala son of Kuldeep Kumar resident of ward no. 5 Bhuna who used to work of sale and purchase of Heroin and is standing today near his house at a vacant place and he is having Heroin. He intends to sell it. He is wearing yellow T-shirt and black lower. If raided immediately then can be apprehended with Heroin. The information being reliable I ASI prepared the notice under section 42 NDPS Act sent it to the police station Bhuna for registering the rapat roznamcha and for informing the officials of police station Bhuna through SPO Baljeet Singh No. 217 police station Bhuna and the Government Vehicle. He has come present back after registering the rapat roznamcha. Thereafter I ASI alongwith companion officials and the Government vehicle reached near the house of Sukhwinder @ Kala son of Kuldeep Kumar resident of ward no. 5 Bhuna. A young person in yellow t shirt and black lower was seen standing in the street who started walk briskly after seeing the coming police vehicle. We stopped our vehicle and apprehended the young person with the help of companion officials and inquired qua name and address. He told his name Sukhwinder @ Kala son of Kuldeep Kumar resident of ward no. 5 Bhuna. He was asked the reason to move from the street but could not reply satisfactorily. That upon suspicion of having some narcotic substance with young person I introduced myself completely and served a notice under section 50 NDPS Act that I ASI Ravinder Singh 100/ Fatehabad police station Bhuna do hereby serve you Sukhwinder @ Kala son of Kuldeep Kumar resident of ward no. 5 Bhuna vide notice that I am having suspicion of having some narcotic substance with you due to which you personally have to be searched. You are having legal right that if you want to be searched in the presence of any Gazetted Officer or



the Magistrate then either of him may be called at the spot. Or you can be produced before them. You express your wish. Upon which abovementioned accused Sukhwinder @ Kala signed the abovementioned notice after reading and understanding the same and the witnesses signed respectively. Thereupon abovementioned accused Sukhwinder @ Kala got recorded his reply to the notice under section 50 NDPS Act after reading and understanding well that I Sukhwinder @ Kala son of Kuldeep Kumar resident of ward no. 5 Bhuna have heard the notice under section 50 NDPS Act given by you well and understood the same. I want myself to be searched before some Gazetted Officer. Therefore the Gazetted Officer may kindly be called at the spot. The reply to the notice was signed by Sukhwinder @ Kala and the witnesses respectively. Then I ASI after the proceedings of notice and reply to notice I called upon from my personal mobile no. 94161-43542 at 4:00 PM Shri Krishan Kumar Naib Tehsildar Fatehabadat his mobile no. 94161-03300 thereby requesting him to reach at the spot after making him acquainted with the circumstances. Shri Krishan Kumar Naib Tehsildar Fatehabad reached at 5-10 PM in Government vehicle at the spot. I produced the apprehended accused Sukhwinder @ Kala son of Kuldeep Kumar resident of ward no. 5 Bhuna alongwith witnesses and notice and reply to the notice. He after going through the notice and reply to the notice and after inquiring from apprehended young person Sukhwinder @ Kala and witnesses separately and directed me to search apprehended young person Sukhwinder @ Kala as per rules. I tried to join the public persons in the investigation but all of them went away after showing their inconvenience. I ASI handed over my personal mobile phone to SPO Karnail Singh 224 who start making video with the phone.

I conducted the search of Sukhwinder @ Kala as per the



instructions of Shri Krishan Kumar Naib Tehsildar Fatehabad. A white mobile phone make oppo with sim no. 89500-29633 was recovered from left pocket of the worn lower of abovementioned Sukhwinder @ Kala and a Rs.100 currency note was recovered from back pocket. A transparent pouch was recovered from the right pocket of Sukhwinder @ Kala and upon checking it as per my experience the narcotic substance Heroin was recovered. The recovered Heroin was weighed with electronic scale then 15.55 grams Heroin was recovered alongwith transparent pouch. I prepared the parcel of Heroin in white cloth and served with seal of RK/3 and prepared sample seal separately. Then the clothed parcel of Heroin alongwith sample seal were served with seal of IS/1 by Shri Krishan Kumar Naib Tehsildar Fatehabad. The parcel of Heroin duly sealed and sample seal were taken into police possession vide seizure memo being case property. The seizure memo was signed accused Sukhwinder @ Kala and witnesses. Shri Krishan Kumar Naib Tehsildar Fatehabad attested seizure memo and parcel clothed Heroin duly sealed and sample seal. The videography and photographs shall be attached in the proceedings after preparing the same. I handed over the seal after use to Dayaram No. 127/ Fatehabad police station Bhuna and Shri Krishan Kumar Naib Tehsildar Fatehabad kept the seal with himself after use. The accused Sukhwinder @ Kala has kept 15.55 grams of Heroin in his possession has thus committed the offence under section 21 B/61/85 NDPS Act. This writing is being sent to police station for registration of case through SPO Baljeet Singh 217 police station Bhuna alongwith government vehicle. Case FIR No. be informed after registering the same. The investigating officer may kindly be sent at the spot for further investigation. I alongwith companion officials and case property and accused Sukhwinder @ Kala is present at the spot.'



3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner would submit that no recovery has been effected from the petitioner and he has only been nominated as an accused subsequently on the basis of disclosure statement of one Deepak @ Arun and Deepak @ Arun himself was also only named by the main accused Sukhwinder @ Kala from whom recovery of 15.55 grams of Heroin is stated to have been effected.

On behalf of the State

Learned State Counsel appearing on advance notice though would submit that in the disclosure statement the role of the petitioner has come forth to the effect that he is the seller of the alleged contraband which was purchased by Deepak @ Arun and subsequently supplied the same to the main accused Sukhwinder @ Kala, but apart from that there is no other incriminating material which would link the present petitioner with the alleged commissioning of offence except for the disclosure statement of the co-accused Deepak @ Arun as available with the prosecution agency, that could necessitate the custodial interrogation of the present petitioner. The learned State counsel is also not adverse to the fact, wherein the petitioner would cooperate with the investigation, the counsel has no objection if the petitioner is granted the concession of anticipatory bail.

4. Analysis

In the light of above circumstances unfolded before this Court, petition deserves to be allowed, preliminary on the grounds that the alleged



contraband has not been recovered from the petitioner, the alleged recovery is also non-commercial in nature and in addition he has only been named by the co-accused in his disclosure statement subsequently, without any substance or material to connect him with the alleged contraband. Above all, the petitioner undertook to join the investigation and cooperate with the investigating agency before this Court in letter and spirit without any default.

5. **Decision**

Hence, in view of the admitted set of circumstances before this Court, the petitioner is hereby directed to be released on anticipatory bail subject to him joining the investigation and reporting to the Investigating Officer concerned within a period of one week from today, upon 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 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 stand cancelled.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

02.09.2024
Sangeeta

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No