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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46993-2023 (O&M)
Date of decision: 06.02.2024

Sumit
...Petitioner
Versus

State of Haryana
...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Raman Chawla, Advocate for the petitioner.
Mr. Kiran Pal Singh, AAG, Haryana.

MAHABIR SINGH SINDHU, J.

Present petition under Section 438 of the Code of Criminal Procedure has been filed for grant of pre-arrest bail to the petitioner in FIR No.168 dated 16.03.2023, under Section 22C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 27A NDPS Act added later on), registered at Police Station City Hansi, District Hisar.

(2) As per prosecution case, 500 injection of Pentazocin were recovered from a Swift Dzire car bearing registration No. HR12AF-6262 driven by co-accused-Ajay. During investigation, he made a disclosure that alleged contraband was purchased by him from the present petitioner.

(3) This Court, on 07.11.2023, while granting interim protection to the petitioner, passed the following order :-

“Contends that petitioner has been nominated on the basis of disclosure made by co-accused-Ajay; and there is no other criminal case pending against him.

Learned State counsel seeks time to verify the above factual

position.

Posted for 20.12.2023.

In the meanwhile, petitioner shall join investigation before the Investigating Officer. In the event of his arrest, the Arresting Officer would admit him to interim bail, till the next date of hearing, on furnishing adequate bail and surety bonds to his satisfaction. The petitioner shall also abide by all the conditions as envisaged under Section 438(2) of the Code of Criminal Procedure, 1973.”

(4) Contends that petitioner was not named in the present FIR; rather nominated on the basis of disclosure made by co-accused-Ajay. Further contends that petitioner was granted interim concession on 07.11.2023; in pursuance thereof, he joined investigation; thus, his custodial interrogation would not serve any purpose. Also contended that there is no material with the prosecution to connect the petitioner with the commission of alleged offence.

(5) *Per contra*, learned State counsel although acknowledged the factum of joining the investigation by the petitioner, but he opposed the prayer on the premise that to find out the source of contraband, custodial interrogation of the petitioner is required.

(6) Heard learned counsel for the parties and perused the record available on the file.

(7) There is no quarrel that petitioner was not named in the FIR; rather nominated in the present case on the basis of disclosure made by co-accused-Ajay, from whom alleged contraband has been recovered. It is also not in dispute that petitioner was granted interim protection by this Court on 07.11.2023 and in pursuance thereof, he joined investigation. Again not in dispute that except the disclosure of co-accused-Ajay, there is no other material available with the police to indicate the complicity of petitioner in any manner.

Hence, in such a scenario, custodial interrogation of the petitioner would not

serve any purpose.

(8) Consequently, there is no option, except to allow the petition.

(9) As a result of the above, petition is **allowed**; interim order dated 07.11.2023 is made absolute subject to the conditions as envisaged under Section 438(2) Cr.P.C.

(10) It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.

(11) The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.

(12) It is made clear that in case of any recurrence on the part of the petitioner, the State of Haryana would be at liberty to move an application for recalling of this order.

(13) Disposed off accordingly.

06.02.2024
Satyawar

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No