

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

106

CRM-M-59800-2024

DATE OF DECISION: 29.11.2024

OM PARKASH

...PETITIONER

Versus

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mohan Singla, Advocate for the petitioner(s).
Mr. B.S.Virk, Sr. DAG, Haryana.

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

This petition has been filed under Section 482 of BNSS, 2023 for grant of anticipatory bail in FIR No. 246 dated 18.08.2024 under Sections 15(b) and 27-A of The Narcotic Drugs and Psychotropic Substances Act, 1985 registered at P.S. Sadar Tohana, District Fatehabad.

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

‘To, the SHO, Police Station, Sadar Tohana. Jai Hind. Today on 18.08.2024, 1 ASI along with HC Rohtash Kumar 543, EHC Rajvinder Singh 976, Constable Hari Prakash 517, HGH Virender Singh 2124, were present at bus stand village Jamalpur Shekha while moving from Crime Branch Tohana via Damkaura in government vehicle number HR 22 GV 1029 driven by EHC



Rajesh Kumar 576 civil dress along with personal laptop & printer for stoppage of narcotic substances. Then a secret informer informed to me ASI that Makhan son of Om Parkash son of Munshi Rio Jamalpur Shekhan is doing smuggling of Poppy husk He is selling Poppy husk while sitting in the door of his house. If raid would be conducted Makhan son of Om Parkash R/ Jamalpur Shekhan can be arrested with Poppy husk in large quantity. As information was reliable, message under section 42 NDPS Act was sent by me ASI through constable Hari Prakash 517 for registration of Daily Diary Report in the police station Sadar Tohana. Then I ASI along with companion employees prepared a raiding party and went on government vehicle while joining along with to Dhupa Ram Chaukidar Son of Shri Jumman Ram son of Shri Ashu Ram resident of Jamalpur Shekha from his house at Jamalpur Shekha and reached on the place as informed, then a young boy was seen to be sitting in the main door of concrete house and he was carrying a plastic bag yellow colour. Who on seeing the police vehicle coming towards him stand up suddenly and taking the said yellow colour plastic bag in his right hand and tried to enter in his house then I ASI got stopped the vehicle and above said person was arrested along with plastic bag and asked his name and address then he informed his name as Makhan son of Om Prakash son of Munshi resident of Jamalpur Shekha. There after notice under section 50 NDPS Act was served upon the said Makhan that I ASI Surender Singh 82 FTB Crime Branch Tohana is informing through this notice to you Makhan son of Om Parkash son of Munshi Rio Jamalpur Shekha that I have doubt of being any narcotic substance in the yellow colour plastic bag hold in your right hand so you and plastic bag hold in your right hand is to be investigated. You are having a legal right that you may got conducted the investigation of your self and yellow colour plastic bag hold in your hand from any Gazetted officer or from Duty Magistrate then they can be called on the spot or you may



be produced before him. Notice was given in writing. Whereupon Makhan and witness HC Rohtash Kumar 543, EHC Rajwinder Singh 976 signed. Then Makhan above replied to notice U/S 50 of NDPS Act that I Makhan son of Om Parkash son of Munshi Rio Jamalpur Shekha have understood your notice u/S 50 NDPS Act after properly reading it, I have sufficient faith in you. But still I want to get investigated myself and yellow colour plastic ban hold in my hand from any Gazetted officer or Duty Magistrate, he may be called on the spot. Notice and reply to the notice was signed by the Makhan and witnesses HS Rohtash Kumar 543, EHC Rajwinder Singh 976. Thereafter after proceedings of Notice, I ASI called to Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad on his Mob. No. 64162 65937 from my mobile no. 94164 71857 at 5.47 PM and informed about the situation and asked to reach on the spot. Thereafter at about 9.110 PM, Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad reached on his personal vehicle. I produced the arrested Makhan son of Om Parkash son of Munshi R/o Jamalpur before Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad alongwith yellow colour plastic bag. Notice served upon his and reply to the notice written by him and instructed to HC Rohtash Kumar 543 for videography of the spot. Then Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad instructed to me ASI to investigate to the arrested Makhan son of Om Parkash son of Munshi Rio Jamalpur Shekha and yellow colour plastic bad hold in his hand after reading to the notice and its reply and after enquiry from the witnesses. Thereupon, as per the instructions of Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad, I conducted investigation as per rule of the Makhan son of Om Parkash son of Munshi Rio Jamalpur Shekha and yellow colour plastic bad hold in his hand then found Poppy husk in yellow colour plastic bag. Thereafter, checked weight of the yellow colour plastic bag with poppy husk by computed scale placed in Govt. Vehicle, then



found 1 Kg. 831 Grns total weight of Plastic bag of Poppy husk including the plastic bag. Thereafter, I ASI bind the mouth of Plastic bag having waste of Poppy husk and prepared a parcel and sealed it with my seal bearing SS/3. Sample seal was prepared separately. Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad also sealed the parcel and sample seal with his seal bearing RK./1 and kept the stamp with him. I ASI kept the parcel of Plastic bag Poppy husk alongwith sample seal for evidence and kept the same in the police custody wide property seizure memo. Seizure memo was signed by the accused and witnesses. Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad attested the parcel of Plastic bag with Poppy husk, sample seal and property seizure memo. I handed over the seal and sample seal to HC Rohtash Kumar 543 to take with him and Sh. Ravinder Saini, Asst. Excise Taxation Officer, Fatehabad kept his seal with him after its use. Above accused namely Makhan has committed the offence u/s 15b/61/85 NDPS Act while keeping in his possession the waste poppy husk measuring 1 Kg. 831 gms. So this writing is being sent to the police station Sadar Tohana through EHC Rajwinder Singh 976 for registration of the case. Case be registered and case number be informed and for the further investigation of the case, other investigation officer be sent on the spot. I ASI is present on the spot. Place village Jamalpur Shekhan. Sd/- Surender Singh ASI Surender Singh 82, Crime Branch, Tohana dated 18.08.2024, time 10.00PM, Mob. No. 94164-71857.'

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case only on the basis of the alleged disclosure statement of co-accused-Makhan during interrogation while the said co-accused was in police custody and subsequently, now has been granted the concession of regular bail by

the Trial Court. He submits that alleged recovery of 1 kg. 831 grams of poppy husk including plastic bag was effected from Makahn who is the son of the petitioner whereas the petitioner is innocent and is 60 years of age is suffering from various age related ailments, moreover, nothing pending is to be recovered from him, therefore, seeks the grant of anticipatory bail.

On behalf of the State

Learned State Counsel appearing on advance notice on instructions from Investigating Officer vehemently opposes the prayer for grant of concession of anticipatory bail stating that the petitioner is hand in gloves with main accused Makhan- who happens to be son of the petitioner and in his disclosure statement has specifically named the petitioner. Therefore, it is highly improbable that the son would name his own father to drag him in the trafficking of narcotics.

4. **Analysis**

Be that as it may, since the disclosure statement is not sufficient piece of evidence even during the course of trial, and at the same time it can be other way round that why son would name his father in the disclosure statement even if he had already been involved in the trafficking of narcotics when there is only 1 kg. 831 grams of poppy husk is involved added to the fact that main accused Makhan has already been granted the concession of regular bail by the Trial Court, thus, after given a thoughtful consideration to the submissions as made, by the counsel for both the parties, 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 within the stipulated time period.

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 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 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 stand allowed.

(SANDEEP MOUDGIL)
JUDGE

29.11.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>