

CNR No. HRFT01-009580 of 2022

CIS No. 1669 BA of 2022.

Sheshank @ Kaku Versus State of Haryana.

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**IN THE COURT OF SUNIL JINDAL, ADDITIONAL SESSIONS
JUDGE, FATEHABAD. (UID No.HR0214).**

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CNR No. HRFT01-009580 of 2022.

CIS No. 1669 BA of 2022.

Bail Application No. 602 BA of 2022.

Date of Institution: 07.10.2022.

Date of Decision: 10.10.2022.

Sheshant @ Kaku son of Kuldeep, resident of Ram Niwas Mohalla,
Fatehabad, Tehsil and District Fatehabad.

.....Petitioner-Accused

Versus

State of Haryana.

.....Respondent

FIR No. 526 dated 30.09.2022.

Police Station : Sadar, Fatehabad.

U/s: 21 (b), 27-A/61/85 of NDPS Act.

First application for anticipatory bail U/s 438 of Cr.P.C.

Present Sh. P.S.Malhotra, Advocate for the petitioner-accused.
Sh. H.S.Malik, Public Prosecutor for the State.

ORDER:

Above-named petitioner-accused Sheshant @ Kaku has sought anticipatory bail under section 438 of Cr.P.C., in the above-noted case by way of the instant first bail application. As per the affidavit furnished by petitioner-accused, no other application for anticipatory bail of the petitioner-accused is pending before any competent court of law. Further, as per report of the concerned Ahlmad, no other bail application of the present petitioner-accused is pending before any other Sessions Court as well as before the Hon'ble High Court. Notice of the instant bail

Sunil Jindal
ASJ, Fatehabad
(UID-HR-0214)
Dt. 10.10.2022.

application has been given to the respondent-State and the reply has been furnished. As per police reply, no other bail application of the present petitioner-accused is pending before any other competent Court of law.

2. Brief facts of the case for disposal of the present bail application, as per police reply, are that on 30.09.2022, a police party headed by ASI Jaivir Singh, on suspicion apprehended co-accused Virender Singh @ Madu in front of Guru Teg Bahadur School, on Fatehabad-Bighar road while riding in a Ritz car bearing registration No.HR22H-5457 and after making compliance of notice under Section 50 of NDPS Act, recovery of 20 gms of heroin contained in a piece of polythene, was effected from the back pocket of his wearing jeans of co-accused Virender Singh @ Madu, in the presence of Sh.Gurnam Chand, Associate Professor CMG College Women, Bhodiakhera. The recovered contraband was taken into police possession. On interrogation, co-accused Virender Singh @ Madu suffered disclosure statement of having purchased the recovered contraband from co-accused Prince @ Bugar son of Pawan Kumar @ Susa. During investigation, on 02.10.2022, co-accused Prince @ Bugar son of Pawan Kumar @ Susa was arrested in this case. On interrogation, co-accused Prince @ Bugar son of Pawan Kumar @ Susa suffered disclosure statement of having purchased the recovered contraband from the present petitioner-accused and sold to co-accused Virender Singh @ Madu. Section 27-A of NDPS Act was added. As per police reply, arrest of present petitioner-accused Sheshank @ Kaku

is pending. Apprehending his arrest, the present petitioner-accused has filed the instant application for anticipatory bail.

3. Learned counsel for the petitioner-accused has submitted that the petitioner-accused has been falsely implicated in the present case on the basis of disclosure-statement of co-accused Prince @ Bugar. He further submitted that the petitioner-accused has nothing to do with the alleged recovery of contraband from co-accused Virender Singh @ Madu. He further submitted that nothing is to be recovered from the possession of the petitioner-accused and he is ready to abide by all the terms and conditions and finally prayed for concession of anticipatory bail.

4. On the contrary, learned Public Prosecutor for the State resisted the instant bail application on the ground that releasing of the petitioner-accused on anticipatory bail would encourage him to repeat such type of offences and he has also been involved in one another criminal case of similar nature and finally he prayed for its rejection.

5. Heard. Merits are not to be dwelt upon at this stage. Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly contraband Heroin weighing 20 grams which was recovered from co-accused namely Virender Singh @ Madu, was allegedly procured from co-accused Prince @ Bugar and said co-accused Prince @ Bugar procured the same from the present petitioner-accused. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of

circumstances, the cumulative effect of which, should enter the judicial verdict. The power under section 438 of Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of the petitioner-accused is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. As per prosecution, custodial interrogation of the petitioner-accused is required to find out from where he had been procuring the contraband. Moreover, as per police reply, the petitioner-accused has also been involved in one another criminal case of NDPS Act. The contention of learned counsel regarding false implication of the petitioner-accused on the basis of disclosure statement of co-accused, is a matter of trial which would be considered after the adducing evidence both the parties.

Therefore, keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground is made out in favour of the petitioner-accused for his entitlement of pre-arrest bail. Accordingly, the instant application for anticipatory bail moved on behalf of the present petitioner-accused Vijender @ Virender Kumar is hereby dismissed. File be consigned to record room.

Pronounced in open Court.
Dt.10.10.2022.

(Sunil Jindal),
Additional Sessions Judge,
Fatehabad (UID No.HR0214)

Note:- Certified that this order contains five pages which have been checked and signed by me.

Dt.10.10.2022
(Suresh, SG-I)

(Sunil Jindal),
Additional Sessions Judge,
Fatehabad (UID No.HR0214)

Present Sh. P.S.Malhotra, Advocate for the petitioner-accused.
Sh. H.S.Malik, Public Prosecutor for the State.

Police reply furnished. Arguments heard.

Order pronounced. Vide my separate order of even date, the instant application for anticipatory bail moved on behalf of the petitioner-accused Sheshank @ Kaku has been dismissed. File be consigned to record room.

Dt.10.10.2022.
(Suresh, SG-I)

(Sunil Jindal),
Additional Sessions Judge,
Fatehabad. UID No. HR0214