

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

101

CRM-M-23105-2023 (O&M)**Date of decision: 27.07.2023**

Bhagat Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. L.S. Sidhu, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in case FIR No.32 dated 23.02.2023, registered under Sections 379, 353, 186, 332 and 411 IPC at Police Station Dharamkot, District Moga.

2. In succinct terms, the facts of the case are that on 23.02.2023 ASI Gurdev Singh along with other police officials were on night patrolling. They received a secret information that the owner of a dhaba namely Gurmeet Singh, along with his son Gurbhagat Singh, daughter Rajni, other family members and unknown persons used to purchase stolen diesel and sell it at a higher price, at Shere Punjab Dhaba (Bille Da Dhaba), situated at Jalandhar Road, Dharamkot and on that particular day also, some people had unloaded drums of stolen diesel from an unknown vehicle, which were lying in the store of the said dhaba. If a raid is conducted at said dhaba, the above said Gurbhagat Singh and Rajni alias Rajji can be apprehended along with drums of diesel. On this information a written ruqa

was sent, and the present FIR was registered. Thereafter, a police party proceeded ahead, for conducting a raid and when they reached the disclosed place, the accused persons attacked them. However, they recovered 800 liters of diesel from said Dhaba and vide DDR No.5 dated 23.02.2023, offences under Sections 411, 353, 186 and 332 IPC were added.

3. Learned counsel submits that the petitioner has been falsely implicated in this case. The police officials, who had forcibly entered the dhaba of the petitioner, manhandled and abused him and his family members. The diesel stored in their premises was actually purchased by his father for using the same for agricultural purposes and the dhaba. The police officials had trespassed into the dhaba and the entire incident was recorded by a CCTV. The petitioner is ready and willing to join the investigation. Nothing is to be recovered from him and his custodial interrogation is not required in the present matter.

4. Learned State counsel opposes the prayer and contends that the petitioner is a habitual offender. He is the main accused, who along with other co-accused indulge in selling of stolen diesel at their dhaba. He further refers to the status report dated 24.05.2023, filed by Ravinder Singh, PPS, DSP, Dharamkot, District Moga, wherein it has been stated that the petitioner is involved in two more cases, one under the NDPS Act and the other under IPC. Moreover, serious allegations have been levelled against him and other accused persons of having attacked the police officials and obstructed them from performing their duty. The custodial interrogation of the petitioner is necessarily required for proper and effective progress in the investigation, to un-earth the source and delivery of the stolen diesel. There is every apprehension of him fleeing from justice, as also

committing similar offences and tampering with the evidence.

5. Heard.

6. Hon'ble The Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

7. In the case in hand, serious allegations have been raised against the petitioner not only with regard to purchase and sale/distribution of stolen diesel but also, of attacking and manhandling the police party and obstructing them from performing their duty. The investigation is at a nascent stage and the truth of the matter is still to be revealed as regards the modus operandi and involvement of other persons. Furthermore, the petitioner does not have clean antecedents, as he is involved in two other cases, under NDPS Act and IPC.

8. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

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9. It is manifestly clear from the above that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

10. The manner in which the crime is committed, gravity of the offence, age, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail.

11. Considering the preceding judgments and the peculiar facts of the case, the criminality is apparent. The nature of the allegations is serious, and allowing the petitioner to join the investigation under the protective umbrella of pre-arrest bail could impede a comprehensive and fruitful inquiry, necessary to uncover the modus operandi and ascertain the truth. Furthermore, there are concerns about the petitioner potentially influencing or threatening witnesses, tampering with evidence, or evading justice and his custodial interrogation is stated to be required as per the status report filed by the State. Consequently, this Court is not inclined to grant the concession of anticipatory bail to him.

12. In view of the foregoing discussion, the present petition being devoid of merits is hereby dismissed.

13. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

27.07.2023
S.Sharma(syr)

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