

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

CRM M-33654 of 2014

Date of decision : 24.08.2015

Dharminder Singh

....Petitioner

V/s

State of Punjab

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. V.K. Jindal, Advocate for the petitioner.

Mr. Shilesh Gupta, Addl. A.G. Punjab.

RAJAN GUPTA J.

Petitioner has sought pre-arrest bail in a case registered against him under section 21 of the NDPS Act vide FIR No. 76 dated 19.06.2014 at Police Station Sarai Amanat Khan, district Amritsar.

Learned counsel for the petitioner has vehemently contended that during the pendency of this petition, various inquiries were undertaken wherein petitioner was found innocent. Pursuant to order dated May 26, 2015, another inquiry was conducted by Superintendent of Police, Investigation, Tarn Taran wherein plea of alibi raised by the petitioner has been accepted. As petitioner has been given a clean chit by various officials in the inquiries, thus, he deserves the concession of pre-arrest bail.

Learned State counsel has referred to various orders passed from time to time.

I have heard learned counsel for the parties.

It appears that FIR was registered on the basis of secret information received by Tarn Taran police that accused were dealing

in smuggling of contraband. They had Pakistani SIMs and mobile phones and were carrying smuggled heroin through international border with Pakistan. This heroin was being supplied to other States. This was being done by bringing the consignment of heroin in vehicles without number plates or bearing fake numbers. On 19.06.2014, a vehicle coming from Attari border was intercepted near a check post towards Jhabal side. One Balkar Singh was apprehended at the spot with 01 Kg heroin. Other three accused namely Davinder Singh, Swaran Singh and Dharminder Singh succeeded in fleeing from the spot. During investigation, accused Swaran Singh was arrested on 22.06.2014 with 50 grams of heroin. Another accused Raj Kumar was taken in custody and on his disclosure statement, 200 grams of heroin was recovered on 06.08.2014. Another accused Davinder Singh was also arrested on 30.04.2015. Challan was presented against the accused Davinder Singh, Balkar Singh and Swaran Singh in the competent court on 06.07.2015. Efforts were still afoot to apprehend accused Sukhbir Singh and Gurjant Singh. As police failed to submit challan within the prescribed period, accused Balkar Singh was granted bail in exercise of powers under section 167(2) Cr.P.C. The case came up for hearing on May 26, 2015. In view of peculiar facts of the case and various inquiries undertaken, this court directed that investigation be supervised by a senior police official preferably by Inspector General of Police, Border Range. As a result, affidavit dated 03.08.2015 has been filed in this court. Some of the facts enumerated above have been extracted from the said affidavit. It has been stated therein that departmental inquiry has been ordered

against the police officials who were responsible for late presentation of challan. Besides, plea of alibi of petitioner has been accepted. According to this affidavit, on the day of occurrence, petitioner was in a hotel on Zirakpur-Shimla highway alongwith Inspector Jagbir Singh, Inspector Bhupinder Singh and DSP Tejinder Singh Virk. Call details of these police officials showed that they were near Chandigarh at the relevant time. This court finds stand of the investigating agency totally contradictory in nature. On one hand it recorded the statement of Head Constable Salwinder Singh who stated that petitioner was present at the spot at the time of occurrence and fled from scene, on the other hand they have believed the plea of alibi set-up by Dharminder Singh. It appears that there is no reference to statement of Head Constable Salwinder Singh in the latest inquiry report. Besides, it is inexplicable how on the day of occurrence, officials of Punjab police were with Dharminder Singh (petitioner herein) who is stated to be a criminal indulging in cross border smuggling. In affidavit dated 18.12.2014 filed by Sukhwinder Singh, Dy. Superintendent of Police, Sub Division Tarn Taran, it has been stated that petitioner is involved in two other FIRs i.e. FIR No. 90 dated 18.07.2014 under sections 411, 414, 489-A-B-C-D IPC and 15-18-21-22-61-85 of the NDPS Act, 25-54-59 of Arms Act and 14 F Act at Police Station Sarai Amanat Khan and FIR No. 262 dated 20.11.2014 under sections 411, 414, 489-A-B-C-D IPC and 21/22-61-85 of NDPS Act, 25-54-59 of Arms Act and 14 F Act at Police Station Gharinda, Amritsar Rural. Para 8 thereof reads as under:-

"8. That there was another case FIR no. 262 dated 20-11-2014 u/s 411, 414, 489-A-B-C-D of IPC and

21/22-61-85 NDPS ACT, 25-54-59 Arms Act and 14 F Act, PS Gharinda, Amritsar Rural and against petitioner Dharminder Singh and others on secret information that the petitioner and others are smuggling Heroin, Smack, Opium, Gold, Silver, Poppy Husk, Arms and ammunitions and fake Indian currency notes from Pakistan by entering in the territory of Pakistan without Visa and Passport. The accused/Petitioner Dharminder Singh is Yet required to be arrested in this FIR."

It has also been stated in para 6 of the affidavit that petitioner joined investigation pursuant to order passed by coordinate Bench of this court on 07.11.2014 but failed to cooperate. He refused to join investigation thereafter despite summons sent to him twice. He had been duly identified by Head Constable Salwinder Singh as being one of the accused present on the spot at the time vehicle was intercepted. Plea of alibi was also disbelieved in this affidavit and prayer was made for dismissal of pre-arrest bail application. A totally contradictory affidavit has now been filed by Manmohan Kumar, Senior Superintendent of Police, Tarn Taran.

In view of conflicting reports submitted before this court by the investigating agency, it appears modus operandi of the entire crime has not yet been unearthed. Custodial interrogation of the petitioner would reveal the entire truth. Besides, stand of the State in its affidavit dated 18.12.2014 is that petitioner is indulging in smuggling of contraband, arms and ammunition, fake currency, gold etc. from across the border. A question therefore arises whether such a person can pray for concession of discretionary relief of anticipatory bail. Answer is clearly in the negative. A

protective order in favour of such an accused would only enable him to mislead the investigating agency. It is well settled that custodial interrogation in such a case is more elicitation oriented (see *CBI vs. Anil Sharma* 1997 SCC (Cr.) 1039. Petition is, thus, without any merit and is hereby dismissed.

In view of peculiar facts and circumstances of this case a copy of the order be forwarded to Director General of Police, Punjab who may examine the entire matter including role of police officials. Learned State counsel may seek instructions from him and submit a status report within two weeks from today. This court may also be apprised of the progress in the departmental inquiry initiated against the officials responsible for delay in submitting challan before the court resulting in grant of default bail to accused Balkar Singh from whom 01 kg of heroine was recovered at the spot.

August 24, 2015

Ajay

(RAJAN GUPTA)
JUDGE

To be referred to Reporter? Yes