

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

**C.R.M-M No.36909 of 2014
Date of Decision : 26.02.2015**

Akash and another

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Inderjit Sharma, Advocate
for the petitioners.

Ms. Amarjit Kaur Khurana, Addl.A.G., Punjab.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This is a petition under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioners in case FIR No.52 dated 24.05.2014 registered under Sections 411, 414 IPC and Sections 15, 18, 20, 21, 22, 61, 85 of the NDPS Act, Sections 61, 1, 14 of the Punjab Excise Act and Sections 25, 54, 59 of the Arms Act at Police Station Sujanpur, Tehsil and District Pathankot.

A perusal of the FIR reveals that omnibus allegations have been levelled against different persons belonging to different villages and it has been alleged that these persons are involved in all kinds of illegal activities

including smuggling of narcotics, gold, foreign currency and trafficking of human beings etc. In the FIR, it has also been mentioned that if raid is conducted heavy recovery can be made. However, despite raid having been conducted no recovery has been made.

Learned counsel for the petitioners has argued that these kinds of omnibus and vague allegations can be levelled against any person and considering the seriousness thereof, it is expected that the Courts would be more vigilant and protect people against this arbitrary exercise of police power. As per the learned counsel, had it been a case where any recovery was shown to have been effected it would have been different but no recovery is shown to have been made despite raid having been conducted. He has further argued that the antecedents of the petitioners are clean.

Learned Additional Advocate General on instructions from ASI Kewal Krishan has accepted the factual assertion that on the receipt of secret information raids were conducted but no recovery could be effected and that the antecedents of the petitioners are clean. She has however stated that though no recovery was made the secret information cannot be belied.

In my considered opinion, this argument would not suffice because this would be handing absolute powers in the hands of the Police because any person can be indicted, arrested and charged without there being any objective evidence against him. Which is not to say that the petitioners are innocent, but at this stage the issue before the Court is whether they should be subjected to arrest only on the basis of a secret information. In the circumstances, it is the duty of this Court to lean towards the liberty of the citizen whatever his antecedents may be.

Consequently, I do not deem it appropriate to deny anticipatory bail to the petitioners.

Resultantly, the petition is allowed. In the event of arrest of the petitioners, they shall be released on bail to the satisfaction of the Investigating Officer subject to the conditions envisaged under Section 438(2) Cr.P.C.

The petitioners are directed to appear before the investigating officer on 10-03-2015 and on any other date as and when their presence is required. In case the petitioner does not appear before the investigating officer in the aforesaid manner the present petition would be deemed to have been dismissed.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

February 26, 2015

ashish

**(AJAY TEWARI)
JUDGE**