

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

CRM-M-17605-2017

Date of decision: 31.10.2017

Ali Hussain

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Ashok Goel, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner Ali Hussain, an accused in FIR No.43 dated 20.3.2017, under Section 18 of NDPS Act (Section 29 of NDPS Act added later on), registered with Police Station Sadar, District Patiala.

Briefly stated, the prosecution story is that on 20.3.2017, a police party had intercepted car bearing registration No.PB-11BB-1225 in the area of village Panjota having its occupants Rikramjit Singh and Jagdeep Singh; that on being searched 3 kgs. of opium was recovered from the car; that formal FIR No.43 dated 20.3.2017, under Section 18 of NDPS Act was registered with Police Station Sadar, District Patiala; that the matter was investigated, during the course of which, petitioner Ali Hussain was nominated as the person, who was supplier of the opium; that

offence under Section 29 of NDPS Act was added.

On registration of formal FIR, apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, however, his such request was declined by learned Special Judge, Patiala vide order dated 4.5.2017. As such, the petitioner has approached this Court asking for similar relief.

Notice of the petition was given to respondent – State, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the records.

Learned counsel for the petitioner has contended that the petitioner has been falsely involved in this case and he has got nothing to do with drug trafficking; that as a matter of fact, a police party headed by SI Gurmit Singh had come to *dhaba* of the petitioner in third week of April, 2017 with production warrant of one Billu along with co-accused Rikramjit Singh @ Rinku and they were searching for Billu in light of disclosure made by Rikramjit Singh @ Rinku, one person was called to the *Dhaba* whose name was Waris; that he was recognized by Rikramjit Singh @ Rinku; that fellow was supplier of opium to them, but when the police party demanded money from him, he could not give the same, however, he was not taken into custody and police party returned; that the police party remained at *dhaba* for 3-4 hours and came in contact with Ali Hussain @ Fazlu, who was running the *dhaba* at that time and became familiar with him asking him to help them to catch the culprit, who is supplying opium to the people in Punjab; that the police party came there

second time headed by SI Gurmeet Singh on 29.4.2017; that it was having production warrant of Fazlu @ Billu with ulterior motive; that the police party met Sher Khan and Jeet Singh at the *dhaba* of the petitioner telling them regarding the production warrant of Fazlu @ Billu but petitioner was not there; that they insisted that they wanted to arrest Ali Hussain @ Fazlu; that Rikramjit Singh @ Rinku was in connivance with them; that Gurmeet Singh was in regular touch with Sher Khan demanding money to discharge petitioner from the case and he got some white papers signed by Ali Hussain @ Fazlu and in that way, he has been involved; that the petitioner has placed on file a CD containing the conversation allegedly between his brother-in-law and Investigating Officer SI Gurmit Singh stating that SI Gurmit Singh was demanding Rs.2 lacs from the brother-in-law of the petitioner to discharge him, therefore, interim bail granted to him vide order dated 18.5.2017 be made absolute, by allowing the instant petition.

On the other hand, learned State counsel has contended that the entire story has been concocted by the petitioner just to make out a case for grant of bail and to raise probable defence in the trial; that further the matter was got probed by the police authorities, however, no merit was found in such allegations; that the custodial interrogation of the petitioner is necessary, therefore, the petition be dismissed.

After hearing rival contentions of learned counsel for the parties, I find that the story put forward in the petition seems to be highly improbable and unconvincing. As regards the CD placed on file, the matter was got probed by the police authorities and no truth in such

allegations has been found. It has been noticed that criminals especially hardened ones do come forward with such type of allegations to save their skins and present a probable defence in the trial. The name of the petitioner is said to have cropped up being supplier of the opium during investigation of the case.

The petitioner is stated to be behind bars in a murder case belong to State of Rajasthan and said to be involved in following other criminal cases:

- (i) FIR No.257 dated 14.7.2006, under Section 34 of Excise Act, P.S. Industrial Area Zabra, District Ratlam (M.P.);
- (ii) FIR No.199 dated 28.5.2007, under Sections 325/323/506 IPC, P.S. Industrial Area Zabra, District Ratlam (M.P.);
- (iii) FIR No.194 dated 29.6.2010, under Sections 353/506/294/34 IPC, P.S. Industrial Area Zabra, District Ratlam (M.P.);
- (iv) FIR No.124 dated 11.4.2011, under Sections 323/294/506/34 IPC, P.S. Industrial Area Zabra, District Ratlam (M.P.); and
- (v) FIR No.61 dated 21.4.2017, under Sections 302/201 IPC, P.S. Salamgarh, District Partapgarh (Rajasthan).

It means that the petitioner is a habitual criminal. As a result of allegations levelled by the petitioner in the petition, the investigation of the case had been transferred to Superintendent of Police, Traffic, Patiala, an IPS Officer. It needs to be mentioned here that a perusal of the order passed by Special Judge, Patiala dismissing application for grant of pre-arrest bail goes to show that there no such contention was raised regarding accused having been framed in this case on account of his failure to pay

bribe money to the Investigating Officer. Had it been so, then similar stand ought to have been taken there also. The omission to do so puts a big question mark over the truthfulness of these assertions. It may be mentioned here that the guilt of the accused will be determined during the trial. If during the trial, it is found out that Investigating Officer SI Gurmit Singh had falsely involved the petitioner in this case on account of his failure to pay bribe money, then stringent action can be taken against him. However, at this stage accused cannot deflect attention from his crime by taking such plea for the reasons detailed above. The drug trafficking is rising at an alarming rate in this region, especially in the State of Punjab, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increase drug trafficking.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation so as to find out the source from

where he is getting the contraband and the persons to whom he had been supplying the same. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for. It is observed that if during trial Judge, Special Court finds some misconduct on the part of the Investigating Officer, then taking of stringent action against him can be ordered. However, making of any such observations regarding the allegations at this stage shall be touching the merits of the case, which is uncalled for.

Further Section 37 of NDPS Act bars grant of bail in case of recovery of contraband amounting to commercial quantity as in the case in hand.

Thus finding no merit in the petition, the same stands dismissed.

31.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No