IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3844 of 2016
Date of decision:- 1.9.2017

Gurinder Singh @ Gindi
...Petitioner

Versus

State of Punjab
...Respondent

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

Present: Mr.A.D.S. Sukhija, Advocate
for the petitioner.

Ms.Manjari Nehru Kaul, Addl. A.G, Punjab.

****

H.S. MADAAN, J.

The instant petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner - Gurinder Singh @ Gindi, an accused in FIR No.17 dated 27.2.2015 for the offences under Sections 21 and 29 NDPS Act, registered with Police Station Maqboolpura, Amritsar.

Briefly stated, the facts of the case as per prosecution version are that on 27.2.2015, a police party led by SI Kuldeep Singh was on patrol and checking duty. During the course of checking of private vehicles on the basis of secret information that car JK-02-F-1320 BMW white in colour using fake registration number was coming from the side of flats of Improvement trust towards Telephone Exchange side use for carriage of contraband, the car was intercepted. It was having four boys with short hair besides a turbaned person. The driver of the car told his name as Surinder Kumar alias Titu son of Darshan Singh, Caste Jatt, resident of City Enclave, Jagraon and the turbaned person sitting on the front seat told his name as Santokh Singh son of Sampuran Singh, Caste Jatt, resident of village Durgapur, Police Station Sarhali, District Tarn Taran. The persons who were sitting on the rear seat disclosed their identities as Sunny Sharma son of Sarfu Ram, Caste Mehra, resident of Ward No.2 village Khera, Police Station Tehsil Akhnoor, State District Jammu, other as Sanjay Kumar alias Sanju son of Sarfoo Ram, Caste Mehra, resident of Ward No.2, village Khera, Police Station/Tehsil Akhnoor, State District Jammu, third one as Shahjada Alam son of Meth Afsaal, Caste Muslim, resident of village Mohmmad Dava Khana, village Sitta, State Bihar, at that time in Jammu Kashmir. As desired by such persons on being asked search of the car was conducted in presence of Sh.Harpreet Singh Dhaliwal, ACP(Crime). A plastic bag was recovered from the right pocket of jacket of driver Surinder Kumar alias Titu, which was found to contain heroin. Sample of 10 gms. was taken out of it and put in a plastic container. It was converted into a parcel. The remaining contents on being weighed came out to 990 gms., which were put in the same bag and then put in a plastic container. Parcels of the sample and the bulk were prepared, which were sealed with the seal of Investigating Officer having impression 'KS' and that of ACP(Crime) having inscription 'HS'. On personal search of such accused, Rs.2 lacs of Indian currency were recovered which were also converted into a sealed parcel, then the case property was taken into possession. From the personal search of Santokh Singh, heroin was recovered out of which sample of 10 gms. was taken and remaining on being weighed came out to 1 kg. Those were converted into sealed parcels and taken into possession. Currency notes worth Rs.3 lacs were also recovered from him. From Sunny Kumar 990 gms. of heroin was recovered, out of which sample was taken out and sample and bulk were converted into sealed parcels. Rs.2 lacs currency notes were also recovered from him. Nothing was recovered from the personal search of Shahjada Alam and Sanjay Kumar. Accused were arrested in this case. Formal FIR was got recorded.

The case was investigated, during the course of which it came out that such persons were part of international gang, who acquire contraband from smugglers of Pakistan and then sell it in different cities of India. Indian currency of Rs.7 lacs recovered from them had been earned by them by selling the contraband. The car in which such persons were travelling was found to have fake number plate carrying No. JK-02-F-1320 whose actual number was PB-46-L-0003. When the case was investigated and accused were interrogated, names of various persons including Ashish Kandhari, Ved Parkash and Mandeep Singh @ Netarpal cropped up being part of drug syndicates. It was further transpired that currency of Rs.7 lacs so recovered had been paid by Mandeep Singh to them in lieu of heroin supplied through him and Rs.7 lacs were to be paid to Ashish Kandhari though on the basis of inquiry by ADCP City-1, Amritsar, Ashish Kandhari was found to be innocent and he was got discharged. Mandeep Singh alias Netarpal was arrested in this case on 28.5.2015 and R.C. of car BMW No.PB-46-L-0003 was recovered from him, in that way, he was owner of the car.

During the course of his interrogation, Mandeep Singh disclosed that petitioner was indulging in illegal trade of heroin and currency notes of Rs.7 lacs had been given to him by the petitioner for further handing over the same to Surinder Singh along with some vehicle for bringing more heroin, which he had got smuggled from Pakistan from co-accused Sunny, Sanjay Kumar and Ved Parkash, in that way, petitioner Gurinder Singh @ Gindi was nominated as accused in the present case.

The investigation revealed that the accused apprehended at the spot besides petitioner have links with smugglers of Pakistan and they had got smuggled the recovered heroin from a smuggler namely Malik of Pakisthan. An amount of Rs.7 lacs recovered from them was paid by Gurinder Singh @ Gindi to accused Surinder Singh in lieu of the heroin purchased through him. Petitioner Gurinder Singh @ Gindi is stated to be king pin of the gang.

The petitioner was on run and could not be arrested. When proceedings for declaring him proclaimed offender were going on, then he approached the Court for grant of pre-arrest bail. His such request was declined by learned Additional Sessions Judge, Amritsar vide order dated 19.9.2015. Later on, he approached this Court for grant of that very concession.

Notice of the petition was given to respondent – State, which has appeared through State counsel. The petitioner was granted interim bail, during the course of which he had joined the investigation but as stated by the Investigating Officer, he has not rendered co-operation and disclosed the facts within his knowledge.

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

Learned counsel for the petitioner has argued that the petitioner is neither named in the FIR nor was arrested from the spot; that he has been nominated on the basis of interrogation of co-accused and statement of co-accused is not legally admissible evidence to prove the offence; that the petitioner does not have any past criminal record; that he has joined the investigation in terms of the order passed by this Court, therefore, his custodial interrogation is not required, as such he be granted pre-arrest bail.

On the other hand, learned State counsel submits that the petitioner is king pin of a big gang of smugglers having contacts in foreign countries and has been engaged in nefarious activities of bringing drugs and narcotic substance from across the border and then supplying it in various cities of India, therefore, he is not entitled to get concession of pre-arrest bail. She has further argued that though in terms of the order passed by this Court, the petitioner had joined the investigation but since he was couched in comparative safety of the interim bail, he did not come forward to disclose all the facts within his knowledge. In that way, his custodial interrogation is a must for complete and effective investigation. In support of her contentions, she has referred to authority ***State of Punjab Versus Paramjit Singh Chahal, 2015(4) R.C.R.(Criminal) 724*** by a Division Bench of this Court. In that very authority, in light of the law laid down by Hon'ble Apex Court, it was observed that there is a qualitative difference between 'custodial interrogation' vis-a-vis an accused on bail who is constantly guided by the legal advice of his advocate. In paras 30 and 34, it has been observed as follows:

> *(30) Section 37(1)(b) of the NDPS Act has no other meaning except that in addition to the offences under Sections 19, 24 and 27-A, the special conditions mentioned in its sub-clause (ii) are applicable in all those cases also where a person is accused of the offences 'involving commercial quantity'. Now when there is material on record to make out a prima facie case under Sections 9A, 21(c) read with Section 27-A and the offences are alleged to have been committed through an organized networking by the drug mafia, rich and affluent persons who are identified as the principal offenders, this Court could not have declared its satisfaction or belief that Chahals were not guilty of committing any offence or that they are not likely to commit the offence while on bail.*
>
> *(34)The parameters for the grant of regular bail are surely different than those for granting the pre-arrest bail. This Court could not draw that distinction while treating Paramjit Singh Chahal at par with his brother Jagjit Singh Chahal. Mere submission of charge- sheet in deference to the statutory time limit does not mean that the doors under Section 173(8) Cr.P.C. were/are closed for the prosecution. If the prosecution can elicit more information or vital clues to find out the deep-rooted nexus of*

drug traffickeers or any other new material having bearing on the merits of the case through the custodial interrogation of Paramjit Singh Chahal, such information or material will definitely assist the Special Court to arrive at a just conclusion. The doors for such an eventuality however, were closed, little realizing that the Apex Court's observations that the persons dealing in narcotic drugs are more dangerous than a murderer as they are instruments in causing death or in inflicting death-blow to a number of innocent young victims who are vulnerable and that the sale and supply of narcotic drugs causes deleterious effects and deadly impact on the society. Those who are dealing in this illicit trade are "a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely". [Ref. Union of India vs. Ram Samujh and Anr. (1999) 9 SCC 429]

The mere fact that petitioner – accused is not named in the FIR and was not arrested from the spot cannot be taken any advantage of by him since the purpose of recording FIR is to set the criminal machinery in motion and it is not substantive piece of evidence. The investigation gets started after registration of the FIR. The manner of committing the offence, the identity of the culprits, the role played by them in the crime can be found out only during investigation. True, statement of a co-accused may not be taken as legally admissible evidence against the other accused during the trial, but for the purpose of investigation, it can certainly be considered as providing a lead in the investigation. Though there is nothing on record to show the previous antecedents of the petitioner but even if it is taken that he had been lucky enough not being named in any FIR so far is no guarantee that he is innocent and is not involved in the drug trafficking regarding which the present FIR has been registered.

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. 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.

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

1.9.2017 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No