

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-4634-2018

Date of decision: - 08.05.2018

Raj Singh alias Raju

.....Petitioner

Versus

Intelligence Officer, Narcotics Control Bureau, Amritsar

.....Respondent

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Dr. Anmol Rattan Sidhu, Senior Advocate
with Mr. Raghav Gulati, Advocate,
for the petitioner.

Mr. D.D. Sharma, Advocate
for the respondent.

MAHABIR SINGH SINDHU, J. (ORAL)

Present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in a complaint case NCB Crime No.20/2017 dated 22.09.2017, under Sections 8, 18, 21, 23, 2, 60 and 61 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'), filed before the learned Sessions Judge, Ferozepur.

2. It is contended by learned senior counsel that neither the petitioner was present at the place of occurrence; nor any recovery has

been effected from him; rather he was nominated as an accused on the basis of the disclosure statement of co-accused, Jaswinder Singh, from whom narcotic substance was recovered by the police. It is further submitted that registration of other FIRs cannot be a ground to deny the anticipatory bail to the petitioner in this case as he has been falsely implicated by the police and he is entitled to the concession of pre-arrest bail.

3. On the other hand, learned counsel for NCB has stated that there is sufficient material against the petitioner to prove his involvement in the commission of the crime. It is further submitted that the petitioner has not joined the proceedings despite repeated notices and the order dated 26.03.2018 passed by learned Judge, Special Court, Ferozepur, and he was deliberately evading the Court proceedings. It is further argued that the petitioner is an habitual offender as he is involved in nine other criminal cases, out of which, three cases are of similar nature i.e. NDPS Act and thus, he is not entitled to the concession of pre-arrest bail.

4. Learned counsel for NCB has placed reliance upon a judgment of the Ho'nble Supreme Court in case titled "**Satpal Singh Vs. The State of Punjab**", passed in CRA-462-2018, decided on 27.03.2018.

5. Heard learned counsel for the parties and perused the paper-book.

6. Precisely, the accusation against the petitioner is that on 29.03.2017, an information was received by Sh. Viney Singh, Intelligence Bureau, NCB Amritsar from Assistant Commandant 137 Bn. BSF

Mamdot Ferozepur that 137 Bn. recovered two pockets of suspected Narcotic Substance from accused Jaswinder Singh which were concealed by Jaswinder Singh in the lower body of Mahindra Arjun Tractor bearing RC No.PB-47-C-5936 and BSF wanted to hand over the same to NCB Amritsar. It is further alleged that the packets were opened and tested with DD Kit available with NCB team and found positive for the test of Heroin. Thereafter, the said packets of Heroin were weighed and found to be 1 kilo 360 grams and 60 grams opium.

7. Perusal of the record reveals that in terms of order dated 21.03.2018, an affidavit of Rajneesh, Intelligence Officer, has been filed on behalf of the respondent and paragraphs No.2 to 5 of the same reads as under: -

“2. That the raid was conducted at the house of Raj Singh @ Raju on dated 29.3.2017 but he was not found in the house.

3. That a continuous surveillance was mounted on his house through local sources, thereafter, 3 notices under Section 67 of the NDPS Act, 1985 were issued to Raj Singh @ Raju to join enquiry and to tender his statement by dated 25.5.2017, 6.7.2017 & 8.8.2017 respectively by registered post.

4. That a letter was also written to S.S.P., Ferozepur by the Zonal Director, Amritsar vide dated 15.9.2017 to know the whereabouts the accused. The SSP, Ferozepur vide letter dated 20.11.2017 intimated that the matter is got conducted through S.P. (Investigation), Ferozepur. The father of the accused told that Raj Singh @ Raju son of Munsha Singh has gone to their land at Uttar Pradesh and further told that as and when he comes back home, he will take him to join investigation of Narcotic Control Bureau, Crime Case No.20/2017 in which he is involved. The copy of letter addressed to SSP, Ferozepur 15.9.2017 and the reply written to Zonal Director alongwith the list of cases pending against Raj Singh @ Raju is appended and annexed as Annexure R-1.

5. That the aforesaid investigation is also being conducted against the accused. That the complaint in this case was filed against Jaswinder

Singh and Raj Singh @ Raju on dated 22.9.2017. The learned Court summoned the petitioner i.e. accused No.2 throughailable warrants vide order dated 16.11.2017. Thereafter, the learned Court has issued a fresh notice to the petitioner for 16.2.2018 vide order dated 7.2.2018. The copies of the order dated 16.11.2017 and 7.2.2018 is appended herewith and annexed as Annexure R-2.”

8. Further, the order dated 26.03.2018, passed by learned Judge, Special Court, Ferozepur clearly reveals that the petitioner is having the knowledge of the proceedings, but he deliberately did not appear and the order dated 26.03.2108 reads as under: -

“The counsel for NCB requested that arrest warrant be issued as respondent No.2 has knowledge of the proceedings but was deliberately not appeared. In the interest of justice now respondent No.2 be summoned throughailable warrant as I am satisfied that he cannot be served through ordinary way of process. Now process be issued for 16.04.2018. One set of process be issued in dasti.”

9. In view of the above, it is apparently clear that the petitioner is well aware of the proceedings pending before the Court of competent jurisdiction, but he is deliberately avoiding the same. Moreover, the recovery from co-accused is commercial in nature and he has specifically named the present petitioner and stated that he conspired with present petitioner to smuggle Heroin and Opium from Pakistan to India. It has also come on record that there are other criminal cases of similar nature pending against the petitioner. Further, the investigation against the present petitioner is still pending and he has not joined the same despite the specific knowledge on the basis of notices sent by the respondent as well the order dated 26.03.2018 without any valid justification. The sim of mobile phone, which was used by the petitioner and co-accused of the

petitioner is to be recovered being most material in view of the statement dated 30.03.2017 made by Jaswinder Singh before the Intelligence Officer.

10. Still further, in view of the law laid down by the Hon'ble Supreme Court in **Satpal Singh's case (supra)** the pre-arrest bail in such like matter is to be granted in case the Court is satisfied that there are reasonable grounds for believing that the person is not guilty of alleged offence and that he is not likely to commit any offence while on bail. But the facts of the present case tell the story otherwise, as there are number of other cases pending against the petitioner, including under the NDPS Act and the observations of Hon'ble Supreme Court made in paragraph 4 of above-said judgment read as under: -

“4. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C. or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail. It is unfortunate that the provision has not been noticed by the High Court. And it is more unfortunate that the same has not been brought to the notice of the Court.”

11. In view of the law laid down by Hon'ble Supreme Court in Satpal Singh's case (supra) and above-said facts as well as taking into consideration the gravity of the offences and its ill effect on the society, the petitioner is not entitled to anticipatory bail and his custodial interrogation is necessary, in order to ascertain his role and for bringing the true facts on record. Thus, this Court does not find any merit in the present petition and the same is hereby dismissed.

12. The above observations may not be construed as an expression of opinion on merits of the case.

May 08, 2018
naresh.k

(MAHABIR SINGH SINDHU)
JUDGE

Whether reportable?	Yes
Whether reasoned/speaking?	Yes