

Sr. No.103

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

CRM-M-21107-2019

Date of decision:09.05.2019

Avtar Singh @ Laddi

..... Petitioner

versus

State of Punjab

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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

Rajbir Sehrawat, J(Oral)

This is a petition filed under Section 438 Cr. P.C. for grant of anticipatory bail to the petitioner in case FIR No.48 dated 12.04.2019 under Section 18/29 of NDPS Act, registered at Police Station Adampur, District Jalandhar Rural.

The brief facts of the present case are that, FIR in the present case was lodged at the instance of police person, who stated that police party was on patrolling duty in the said area. The police party was at a distance of about 50 metres from the shop of Unisex Saloon and Barber. A boy was seen sitting in a Verna car parked in front of the said shop. He was handing over a wrapped plastic polythene envelope to another boy standing outside the car. On seeing police party, the driver of the Verna car fled away from the spot after handing over the said polythene envelope to the boy standing outside the car. The boy who had taken the envelope was apprehended by the police, who disclosed his name as Jaswinder Singh. The police officer suspected him to be in possession of contraband. Thereafter, on consent of the Jaswinder Singh, his search of the said was

conducted by the police personnel. On being searched, he was found in possession of 50 gms of opium. Further the said boy disclosed that the said consignment of 50 gms of opium was handed over to him by Avtar Singh @ Laddi, who was sitting in the Verna car. It was further disclosed that the said Avtar Singh was a big smuggler of opium and used to supply the same by car. Thereafter, procedure of preparing the samples and investigation was carried out. With these allegations, present FIR has been lodged.

While arguing the case, learned counsel for the petitioner has submitted that the alleged recovery from the co-accused is only of a non-commercial quantity of the prohibited substance. Still further, it is submitted that identity of the petitioner itself is debatable because he has been named in the case only on the basis of the alleged disclosure statement of the co-accused. The petitioner was not even present at the spot at the relevant time because he had already gone to Himachal Pardesh for vacations with his wife. Learned counsel has placed reliance upon certain receipts issued by a toll plaza and a restaurant. Therefore, it is submitted that the petitioner cannot be said to be involved in the case. Further, it is submitted that the Court below has declined anticipatory bail to the petitioner by mentioning that there are six more FIR's against the petitioner. However, out of those FIRs; in 2 FIRs under NDPS Act, the petitioner has already been acquitted, in 3 FIRs under NDPS Act the petitioner is on bail, and the cases involved only non-commercial quantity. Remaining one case is under Section 279 of IPC; registered in Himachal Pardesh.

Having heard learned counsel for the petitioner, this Court does not find any substance in the arguments of learned counsel for the petitioner.

Of course, the accused, as an individual, has a right to life and liberty, however, that right to life and liberty can be curtailed according to the procedure prescribed by the law. In case of criminal investigation, the ordinary prescribed procedure is that the Investigating Officer can arrest the accused even without warrant. But; to ensure that innocent person is not unduly harassed by the Police Officers by misusing their authority, special and extraordinary power has been conferred upon the courts to protect the individual from unnecessary harassment. However; this power is so extraordinary that this is not even available in some parts of the country and qua some offences under special statutes; in the entire country. Therefore, being a special power, the power under Section 438 Cr.P.C has to be exercised only in cases, where there are circumstances leading, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that if the accused is protected from the arrest, then the investigation of the case shall not be unduly hampered.

The facts as mentioned in the FIR do find the mention of the name of the petitioner. The petitioner is accused of offence under Section 29 of NDPS Act. Therefore, the allegation against the petitioner is that he is supplier of the prohibited substance. Hence mere fact that only 50 gms of opium was recovered from the co-accused; which is a non-commercial quantity, is totally irrelevant; so far as the case against the petitioner is concerned. On the contrary, this recovery, prima facie, tends to substantiate the allegations against the petitioner that he is miscellaneous supplier of the drugs in the area. Still further, the very fact that the petitioner is involved in atleast 5 more cases under NDPS Act also suggests that the petitioner, ex-facie, cannot be believed qua his assertion that he is not involved in the

case. As has been argued, the petitioner is alleged to have indulged in drug trafficking despite the fact that he was released on bail in earlier cases. This also suggest that the petitioner has the tendency to misuse the concession of bail granted by Court. Hence in the facts of this case, this Court does not find any material, showing, ex-facie, the innocence of the accused, vis a vis the allegations levelled against him. Therefore, this court is not inclined to exercise its powers under Section 438 Cr.P.C so as to grant anticipatory bail to the petitioner.

Although learned counsel for the petitioner has also raised an argument qua plea of alibi; alleging that he was present in the State of Himachal Pardesh at the relevant time; and he has also placed reliance upon the receipt issued by toll plaza and the bill issued, allegedly, by the restaurant in Himachal Pardesh, however, in none of the bills, neither the name of the petitioner is mentioned nor the vehicle number which is alleged to be involved in the FIR is mentioned. Rather toll plaza receipt sought to be relied upon by the petitioner relates to some other vehicle, which is not at all alleged to be connected with the present case. Hence there is no reason, atleast at this stage, to rely upon these documents. On the contrary, this also reflects the tendency of the petitioner that he can resort to the fabrication of the evidence as well; to scuttle the process of the Court.

In view of the above, finding no ground to interfere in the petition, the same is dismissed.

However, these observations would not affect any other proceedings in any manner whatsoever.

9th May, 2019

Shivani Kaushik

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE