

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

CRM-M No.21859 of 2019
DATE OF DECISION : 3rd JULY, 2019

Sanjiv Sharma @ Sanjeev Sharma

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Rajiv Joshi, Advocate for the petitioner.

Mr. M. K. Sangwan, Deputy Advocate General, Haryana.

* * * *

RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.0120 dated 08.04.2019 registered under Section 15/61 Narcotics Drugs & Psychotropic Substances Act, 1985 at Police Station Naraingarh, District Ambala.

The FIR in the present case came to be registered on the statement of Inspector Keval Singh, CIA Staff, Naraingarh in which it was stated that he had received secret information that one red coloured closed body Canter, bearing registration No.HR 68-B-8648 was standing on kacha road leading to Kala Amb towards Ruchra factory, whose driver is stopping many truck drivers on the way and he is having some kind of secret conversation with them. This led the police officers to have suspicion that the said driver was having some contraband substance in his possession. The information in this regard was sent to Mr. Amit Kumar HPS, Deputy Superintendent of Police, Naraingarh for

information. On the said secret information, the above said inspector along with his companion police officials reached the spot and on reaching there, the police party found that red coloured closed body Canter bearing registration number as stated above, was parked on the road and a person was found sitting on the driver seat. The driver was asked to come down and he disclosed his name as Ravinder Singh alias Jonku. After having been given due notice under Section 50 of the NDPS Act, the search of the vehicle was conducted in the presence of Mr. Amit Kumar, Deputy Superintendent of Police, Naraingarh. During the search, apart from some small drums which were loaded in the Canter, four plastic bags were found; whose mouth had been sealed. Out of these, two were found to be of white colour and two were of black colour. On being questioned, the said driver Ravinder Singh disclosed that these plastic bags were having poppy husk. Accordingly, the bags were taken out from the Canter. On being weighed; total quantity of poppy husk found in these bags was 1 quintal and 60 kilograms. Samples were drawn out of that. On further questioning, the registration certificate of the Canter was found. Canter was found to be owned by one Himanshu Bhalla, resident of Panchkula. He was also joined in the investigation, from whom it came out that 200 drums were loaded in the Canter from Mumbai and were to be taken to Mukhmajra, Himachal Pradesh. Accordingly, the FIR was registered.

During the investigation above said Ravinder Singh disclosed that he had got the above said poppy husk from the present

petitioner. Hence, the name of the petitioner also came to be involved in this case.

While arguing the case, the learned counsel for the petitioner has submitted that, admittedly, the petitioner was not found to be present on the spot. Nothing has been recovered from him. His name has been included in the case only on the basis of the disclosure statement of the co-accused, from whom the recovery has been effected. Still further, it is submitted that police have tried to change the nature of the case, by substituting the name of the petitioner in place of some other person, who was allegedly named originally by the co-accused as the supplier of the drugs. The counsel for the petitioner has also relied upon an judgment passed by a coordinate Bench of this court in ***Jaz Singh versus State of Haryana, 2016(1) RCR (Criminal) 454***, to contend that since the petitioner was not found at the spot, therefore, he is entitled to grant of anticipatory bail.

On the other hand, learned counsel for the State on being instructed by SI Krishan Lal, CIA Staff, Naraingarh, submits that sufficient material has been found against the petitioner to justify his custodial interrogation. It is disputed by counsel for the State that anybody else was named by the co-accused. There was no substitution of name of the petitioner in place of somebody else. It is further submitted by counsel for the State that, in fact, the co-accused has named the supplier as Billa referring him as owner of the *dhaba*. The name Billa is referable only to the present petitioner and nobody else. It is also pointed out that the present petitioner has been pretending to be the owner of the

dhaba to ensure that his supplies are taken in appropriate manner by the drivers of the trucks, who were having stop-over at this *Dhaba*. To justify the custodial interrogation, learned counsel for the State has pointed out that during the investigation conducted so far, besides the disclosure statement of the co-accused, the call details taken by the investigating officer, have also shown a connection of the petitioner with the co-accused arrested for drug trafficking in this case. Learned State counsel has pointed out that before the date of occurrence itself, the petitioner has been found to have talked with co-accused on mobile phone. Therefore, the petitioner cannot claim that he is not involved in the case. It is also submitted by learned counsel for the State that the petitioner is having another case of similar nature as well, registered against him at different police station.

To counter the arguments of learned State counsel, learned counsel for the petitioner has submitted that another case was also of the same date, as is of the present case.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance/interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-

facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and even through-out the country qua some offences under special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

In the present case this court finds that a person has been arrested with a very heavy quantity of the contraband. He has specifically named the petitioner as the person who has supplied this contraband to him. There is nothing on record, as of now, to suggest that the petitioner has no connection with the said co-accused, in any manner whatsoever. Rather as per the record of the police the petitioner is alleged to have repeated contacts with the co-accused from whom the recovery is stated to have been made. Therefore, this court does not find any mitigating circumstance, showing *ex-facie* innocence of the accused, qua the allegations levelled against him. Moreover, since the police claims to have collected some material relatable to the petitioner qua the offence, therefore, this court finds substance in the argument of the learned counsel for the State that the police deserve to be given an opportunity to investigate the case in the manner considered appropriate by it. Since the petitioner has been alleged to be in repeated contact with the co-accused, from whom the recovery has been made, this court finds

that protecting the petitioner against his arrest at this stage would hamper the free and fair investigation of the case.

Although, the counsel for the petitioner has relied upon the judgment in the case of *Jaz Singh (supra)*, however, this court finds that the facts of the present case are totally distinguishable as compared to the facts of the judgment in aforesaid case. In that case the positive claim of the petitioner was that he had engaged the co-accused as a driver on the truck owned by him and that driver had mis-conducted himself leading to the offence. He further argued that he was not even present at the spot when the recovery was made by the police. Beyond the fact that the person was owner of the vehicle in that case, there was nothing on record to suggest that he was involved in the offence. However, in the present case the police file contains definite incriminating material which can lead to a positive connection of the petitioner with the consignment allegedly recovered from the co-accused.

In view of the above, but without commenting any further on merits of the case, this court does not find any ground to grant anticipatory bail to the petitioner. Therefore, the present petition for anticipatory bail is dismissed.

3rd JULY, 2019
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>