

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

**Criminal Misc. No. M-55799 of 2018
Date of decision: 08.02.2019**

Piara Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Vipul Jindal, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

The present petition has been filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.292 dated 05.11.2018 registered under Section 18,25,29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station City Tarn Taran.

Learned counsel for the petitioner submits that the petitioner is not having any criminal antecedents and has falsely been implicated in the case. The alleged recovery has falsely been fastened upon him as the truck in dispute does not belong to him. Learned counsel further submits that question of conscious possession is a debatable issue, which is to be decided during trial. Learned counsel also submits that the petitioner was not arrested from the spot and his bail application has been dismissed on the ground of presumption whereas provisions of Section 54 of the NDPS Act are not attracted . Learned counsel also submits that bar under Section 37 of

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the NDPS Act can only be there in case, there is conscious possession of the petitioner whereas the alleged recovery was not effected from the conscious possession of the petitioner. It is also the argument of learned counsel for the petitioner that learned Special Court has overlooked the observations recorded by Hon'ble the Apex Court in ***State of Karnataka and others vs. Uma Devi, 2006(2) SCT 462***. It is also the argument of learned counsel for the petitioner that in case of not arresting the petitioner from the place of occurrence, the involvement of petitioner would be a debatable issue and he becomes entitled for anticipatory bail. The petitioner has been implicated on the basis of statement made by co-accused. The report of Forensic Science Laboratory has not been received so far and in absence of any such report, it cannot be said that the alleged recovery made from the co-accused was of any narcotic substance and no offence is made out under the NDPS Act. It has further been argued that as per prosecution, the secret information was received and on the basis of said secret information, recovery was effected. Even that secret information was not recorded in writing as required under Section 42 of the NDPS Act. Learned counsel for the petitioner has also relied upon judgments rendered by Hon'ble the Apex Court in ***Sarija Banu (a) Janarthani alias Janani and another vs. State through Inspector of Police, 2004 (12) SCC 266, Darshan Singh vs. State of Haryana, 2016(14) SCC 358, State of Rajasthan vs. Jag Raj Singh @ Hansa, 2017(1) SCC (Cri) 348, Kishan Chand vs. State of Haryana, 2013(2) SCC 502, Siddharam Satlingappa Mhetre vs. State of Maharashtra and others, 2011(1) SCC 694, Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra and another, 2005(5) SCC 294*** as well as judgments rendered

by this Court in *Deep Singh vs. State of Punjab and others* (CRM-M No.7057 of 2015 decided on 27.07.2015), *Surjit Singh vs. State of Punjab* (CRM-M No.45320 of 2016 decided on 28.02.2017), *Karamjit Singh alias Pammi vs. State of Punjab* (CRM-M No.38006 of 2018 decided on 01.10.2018), *Harinder Singh @ Happy vs. Central Bureau of Narcotics* (CRM-M No.22034 of 2017 decided on 29.05.2018), *Gurdev Singh vs. State of Punjab* (CRM-M No.36526 of 2016 decided on 02.12.2016), *Tarsem Chand @ Dhipai vs. State of Punjab* (CRM-M No.44866 of 2017 decided on 15.03.2018), *Raj Kaur vs. State of Punjab* (CRM-M No.34400 of 2018 decided on 16.08.2018), *Anmol Kaur vs. State of Punjab* (CRM-M No.5793 of 2018 decided on 24.05.2018), *Davinder Singh @ Bitta vs. State of Punjab* (CRM-M No.30714 of 2015 decided on 05.10.2015), *Naresh Kumar vs. State of Haryana* (CRM-M No.14625 of 2015 decided on 28.07.2015), *Tilak Singh vs. State of Punjab* (CRM-M No.43732 of 2016 decided on 14.12.2016), *Harprit Singh Bahad vs. State of Punjab* (CRM-M No.4161 of 2017 decided on 10.05.2017), *Gurwinder Singh vs. State of Punjab* (CRM-M No.21093 of 2016 decided on 28.07.2016), *Dilbagh Singh vs. State of Punjab* (CRM-M No.1903 of 2018 decided on 29.05.2018), *Gagan @ Harman vs. State of Haryana* (CRM-M No.1548 of 2017 decided on 21.03.2017), *Shakeel Ahmed vs. State of Punjab* (CRM-M No.19239 of 2017 decided on 18.09.2017), *Jai Bhagwan vs. State of Haryana* (CRM-M No.29890 of 2017 decided on 12.09.2017), *Krishan Singh vs. State of Punjab* (CRM-M No.28796 of 2014 decided on 23.02.2015), *Kulwinder Singh @ Kinda vs. State of Haryana* (CRM-M No.42258 of 2018 decided on 11.12.2018), *Daro vs. State of Punjab*

(CRM-M No.38088 of 2018 decided on 13.11.2018), Baldev Singh vs. State of Haryana (CRM-M No.7191 of 2018 decided on 27.03.2018), Ombir vs. State of Haryana (CRM-M No.36997 of 2017 decided on 01.11.2017) and Randhir Singh vs. State of Punjab (CRM-M No.32900 of 2014 decided on 28.10.2014) in support of his contentions.

Learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner was found in conscious possession of 8 kgs opium, which falls under the ambit of commercial quantity and as per schedule enshrined under Section 37 of the NDPS Act, the petitioner is not entitled for anticipatory bail. On the basis of secret information, the recovery was effected and the petitioner was nominated on the basis of disclosure statement made by co-accused Rashpal Singh. At the time of anticipatory bail, evidence is not available and only the allegations are to be taken into consideration. Learned State counsel while relying upon judgment rendered by Hon'ble the Apex Court in *Satpal Singh vs. State of Punjab, 2018(5) Scale 519* also submits that in case, huge recovery is effected and the same falls in the category of commercial quantity, the provisions of Section 37 of the NDPS Act are attracted. Learned State counsel also submits that the petitioner cannot take benefit of anticipatory bail on the ground that FIR was registered on the basis of secret information and the petitioner is not entitled to presumption of innocence in view of provisions of Section 54 of the NDPS Act.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

As per allegations levelled in the FIR, accused -Rashpal Singh was found in conscious possession of 8 kgs opium. The search was conducted on the basis of secret information and the petitioner was nominated as accused on the basis of disclosure statement made by said Rashpal Singh.

The petitioner was not arrested from the spot. The identity of the petitioner as well as his involvement are debatable issues to be considered during trial. Nothing was recovered from him. Presumption of Section 54 of the NDPS Act cannot be against the petitioner. The Bar of Section 29 of the NDPS Act cannot be there as it is not a case of conscious possession. The FSL report has not been received and in the absence thereof, nothing can be said.

By considering the submissions made by learned counsel for the petitioner that the petitioner has been implicated on the basis of disclosure statement made by co-accused Rashpal Singh; no other case under the NDPS Act is pending against him; the petitioner cannot be at par with his co-accused from whom the recovery was effected; he has joined investigation; allegations are matter of evidence, which shall be tested by the trial Court during trial; he was not present at the place of occurrence and no recovery was effected from him and nothing has been pointed out as to how the petitioner is going to influence the witnesses as all the witnesses are official, the present petition is allowed and interim order dated 08.01.2019 passed by this Court in favour of the petitioner is made absolute.

However, the petitioner is directed to join investigation as and when called upon by the Investigating Officer and to abide by all the

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conditions as provided under Section 438 Cr.P.C.

08.02.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes