

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

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CRM-M No. 50012 of 2019

Date of decision : 4.12.2019

Tarun

.....Petitioner

Vs.

State of Punjab

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Onkar Singh Batalvi, Advocate, for the petitioner

Mr. Harbir Sandhu, AAG, Punjab

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of pre-arrest bail in case FIR No. 105 dated 22.7.2019, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Sadar Bathinda.

The facts giving rise to the present FIR involved in the case are that SI Jaswinder Singh along with other police officials were going for searching the suspected persons. At that time, one secret informer informed that one Ajay Kumar son of Om Parkash resident of Killianwali Mandi, who is habitual of selling heroin, was bringing the same in an Eon car of white colour and on the front registration number plate word "Sarpanch" is written. If a barrier is erected, then he could be apprehended. He is going to supply the heroin in the area of Bhucho Mandi. Upon that a barrier was set up. The car, as described by the secret informer was seen coming on the road. On seeing the police, driver of the car turned the car backward. However, the police officials apprehended the driver. On being questioned, he has disclosed his

name as Ajay Kumar son of Om Parkash resident of Dasmesh Nagar, Dhanak Mohalla, Mandi Killianwali, District Sri Muktsar Sahib. On the option being given to him, he had opted to be searched in presence of a gazetted officer. Accordingly, DSP, Bathinda Rural was called. In the meantime, Gurjant Singh, Panch of village Katarsinghwala came on the spot. He was also apprised of the facts. Thereafter, on instructions of the DSP, the search was conducted. During his search, 270 grams of heroin was recovered from the pocket of his kurta. Beside this, Rs.2200/-were also recovered from his pocket. Accordingly, the FIR was registered. On further investigation, said Ajay Kumar made a statement that he had got acquaintance with one person named Kalu, at Delhi. He used to talk to the said Kalu on mobile phone, as well as, through whats-app messages. On his asking, the money was deposited in the account of one Rakesh Kumar. The present petitioner is alleged to be the said Kalu. Hence, the name of the petitioner has surfaced in the case. Accordingly, the petitioner is apprehending his arrest.

While arguing the case, learned counsel for the petitioner has submitted that the petitioner is not known as Kalu. The petitioner is the neighbour of co-accused Ajay Kumar. Therefore, his name unnecessarily been dragged in the case. It is further contended that there is no other case against the petitioner. Hence, the petitioner deserves to be protected against his arrested.

Of course the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing

the right to life and liberty, as prescribed under Cr.P.C.; is that the investigating officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the investigating agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some parts of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, it has come out during the investigation that the arrested accused had been talking to one person named Kalu on mobile as well as on whats-app. Further investigation has led to disclosure of the above said mobile number, which is in the name of Tarun. The co-accused has specifically named that Kalu used to talk on the said mobile phone number. Therefore, prima facie, it is obvious that the petitioner would be the same person Kalu, who was being referred to by the co-accused. Although the final decision qua the identity and the participation of the petitioner would be the subject matter of further investigation and of the trial, at this stage, this Court does not find any mitigating circumstances in favour of the petitioner so as to exercise its extraordinary powers to grant him anticipatory bail. Otherwise also, the quantity of heroin recovered from the co-accused is commercial quantity. He is alleged to have stated before the police

that he was doing it on regular basis and that the petitioner was the person; who was arranging the supply for him. Therefore, the police would be required to carry out intensive investigation to unearth the facts out of gamut in the matter. If the petitioner is granted protection; then the free and fair investigation can also be adversely affected.

In view of the above, finding no merit in the petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

4.12.2019

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No