

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

CRM-M-444-2020

Date of decision:-17.3.2020

Shinda Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Digvijay Nagpal, Advocate
for the petitioners.

Rana Harjasdeep Singh, DAG, Punjab.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioners – Shinda Singh and Charanjeet Kaur, both of them accused in FIR No.173 dated 8.11.2019 for the offence under Section 15 of NDPS Act, registered with Police Station Sadar, Malout, Tehsil Malout, District Shri Muktsar Sahib.

Briefly stated, the facts of the case as per the prosecution version are that, on 8.11.2019, a team from STF Camp Malout while being present near village Jhorar bus stand in connection with patrolling

and checking of suspects had received a secret information that some unidentified persons had kept poppy-husk in the plastic bags in a room on eastern side of Panchayat Dharamshala located opposite to the Majar of Baba Nahar Singh at village Jhohar; the said team accordingly went there and found four polythene bags, three of black colour and one of white colour; on being searched, three plastic bags were found to contain 15 kgs. poppy-husk each, whereas fourth polythene bag of white colour was found to contain 10 kgs. 300 gms. of poppy husk, total 55 kgs. 300 gms.; the said contraband was accordingly taken into police possession. The matter was investigated, during the course of which accused Shinda Singh and his wife Charanjeet Kaur besides one more person were nominated being the persons to whom the contraband belonged. The accused had suffered extra judicial confession before Amritpal Singh on 11.11.2019.

On registration of formal FIR, apprehending their arrest in this case, the petitioners had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, however, their such request was declined by learned Additional Sessions Judge, Sri Muktsar Sahib vide order dated 20.12.2019. As such, the petitioners have approached this Court asking for similar relief.

Notice of the petition was given to respondent – State, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the records.

The recovery in this case amounts to commercial quantity.

Section 37 of the NDPS Act comes in the way, which reads as under:

Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Furthermore, as has been noticed by learned Additional Sessions Judge, Sri Muktsar Sahib, both the petitioners are involved in drug peddling inasmuch as petitioner Shinda Singh was convicted in FIR No.31 under Section 15 of the NDPS Act, registered with Police Station Sadar, Malout, whereas petitioner No.2 Charanjit Kaur has been convicted in FIR No.173 dated 12.8.2007, under Section 15 of NDPS Act registered with Police Station Sadar, Malout as well as FIR No.183 dated 2.8.2011,

under Section 15 of NDPS Act registered with Police Station City, Dabwali and FIR No.247 dated 21.11.2010 under Section 15 of the NDPS Act registered at Police Station City Dabwali. Despite having been convicted, the petitioners are shown to be involved in this case.

Although according to the petitioners, they are not named in the FIR and have been falsely involved by the police out of vengeance since they had filed a petition against the local police in the High Court but I do not find any merit in such contentions. The innocence or guilt of accused shall be determined during the trial and at this stage, the prosecution case is to be seen as such for the purpose of determining as to whether the petitioners are entitled to concession of pre-arrest bail or not.

Furthermore, merely on account of the fact that petitioners are not named in the FIR does not given any benefit to them. But then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit/criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

Again at this stage no conclusion can be drawn that petitioners have been involved in this case by the local police just to wreak vengeance upon the petitioners, though the petitioners may be able to prove that thing during the trial by leading adequate evidence.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

The drug trafficking is rising at an alarming rate in this region, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increase drug trafficking.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Custodial interrogation of the petitioners is definitely required for complete and effective investigation so as to find out the source from where they are getting the contraband and what was their modus operandi in bringing the contraband and then supplying it to various persons. In case custodial interrogation of the petitioners is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely

which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

17.3.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No