

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

CRM-M-15878-2020(O&M)

Date of decision:-28.9.2020

Harbhajan Singh

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr. Munish Raj Chaudhary, Advocate
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab.

H.S. MADAAN, J.

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by petitioner – Harbhajan Singh aged about 39 years, an accused in FIR No.173 dated 8.11.2019 for the offence under Section 15 of NDPS Act, registered at Police Station Sadar, Malout, District Sri Muktsar Sahib.

Briefly stated, the prosecution story is that on 8.11.2019, a police party headed by ASI Narinderpal Singh, while being present near village Jhorar bus-stand in connection with patrolling and checking of suspicious persons, received a secret information that some unidentified persons had stored contraband in the form of poppy-husk placed in plastic

bags in a room on the eastern side of the Panchayat Dharamshala situated opposite the Mazar of Baba Nahar Shah at village Jhorar. The police party accordingly proceeded to that place and found four plastic bags, three of black colour and one of white colour containing poppy-husk lying in the room. Some contraband was lying scattered there. On being weighed, the recovered contraband came out to be 55 kgs. and 300 gms of poppy-husk. Formal FIR was registered. The investigation in the matter started, during the course of which present petitioner Harbhajan Singh, Chhinda Singh, Charanjit Kaur @ Bhappo and Satto were nominated on the basis of statement of Sarabjit Singh of that very village, who had claimed that he had seen such persons storing some articles in the room of Panchayat Dharamshala on 4.11.2019. Furthermore, as the prosecution story goes, Chhinda Singh had confessed before Amritpal Singh of his village that the recovered poppy-husk belonged to them. Satto was arrested in this case. Challan has been filed. Chhinda Singh and Charanjit Kaur @ Bhappo are absconding.

Apprehending his arrest in this case, the petitioner had approached the Court of Sessions for grant of pre-arrest bail but his such application was declined by learned Additional Sessions Judge, Sri Muktsar Sahib vide order dated 8.6.2020. As such, he has approached this Court for grant of similar relief, which request is being opposed by the State counsel.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

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.

Furthermore, the recovery involved amounts to commercial quantity attracting rigor of Section 37 of the NDPS Act, 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 3 [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.

(iii)(2) The limitations on granting of bail specified in clause (b) of sub-section (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.

Though in this case the petitioner was granted interim bail with a direction to join the investigation and he is stated to have joined the investigation with the police but as submitted in para No.4 of the written

reply filed on behalf of the State, the petitioner has though joined the investigation on 10.7.2020 but he is not cooperating and his custodial interrogation is required to investigate the case properly and effectively and in order to find out the modus operandi of the whole operation conducted by the petitioner in commission of crime in connivance with co-accused. This very plea along with the other objections with regard to bar of Section 37 of the Act have been put forward by learned State counsel.

I do not see any reason to discard such contentions put forward on behalf of the State.

Learned counsel for the petitioner has contended that the petitioner is sought to be connected with the recovery on account of statement made by one Sarabjit Singh of his village but such Sarabjit Singh has furnished an affidavit that he had not mentioned name of the present petitioner before the police and present petitioner is not doing business of selling drugs. In that way, even prima facie, no offence against the petitioner is made out.

However, learned State counsel has contested this contention. I on my part feel that filing of such affidavit of Sarabjit Singh by the petitioner rather than helping him goes against him. It shows that petitioner has already started influencing the prosecution witnesses and is trying to damage the prosecution case. Such type of person does not deserve concession of pre-arrest bail. Sarabjit Singh having made statement to the police cannot possibly furnish such type of affidavit. Even according to him, even if it is taken that police had not recorded his statement properly then he can say so on oath during the trial. Furnishing

of such type of affidavit by Sarabjit Singh, the authenticity of which is yet to be established, is not helpful to the case of the petitioner.

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 petitioner is definitely required for complete and effective investigation. In case custodial interrogation of the petitioner 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.

28.9.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No