

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

CRM-M No.18483 of 2020 (O&M)

Date of Decision: 28.10.2020

Gurpreet Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. A.P.S.Deol, Senior Advocate assisted by
Mr. H.S.Deol, Advocate for the petitioner.

Mr. H.S.Multani, Assistant Advocate General, Punjab
for the respondent/State.

MAHABIR SINGH SINDHU, J.

Present petition under Section 438 of the Code of Criminal Procedure (Cr.P.C.) has been filed for grant of anticipatory bail to the petitioner in FIR No.59 dated 20.04.2020, under Sections 15, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*), registered at Police Station Longowal, District Sangrur.

As per prosecution case, on 20.04.2020 at about 04:15 PM, ASI Ram Singh received secret information that Lakhwinder Singh @ Lakha and Sukhdeep Singh @ Sabhi, who are habitual of selling the poppy husk, which was supplied to them by Gurpreet Singh (petitioner). Balkar Singh @ Gorkha also indulged in the said business. During *Nakabandi*, Sukhdeep Singh @ Sabi was nabbed while transporting 175 Kgs. 500 grams *Poppy Husk* in Bolero Maxi

Plus Truck bearing registration No.PB-03AT-4650, who on interrogation disclosed that he along with Lakhwinder Singh used to sell the *Poppy Husk*, which was supplied by the petitioner.

Learned Senior Counsel contends that petitioner has been falsely implicated in this case as he has no concern with the alleged recovery of contraband or Bolero Maxi Plus Truck bearing registration No.PB-03AT-4650. Also contends that nothing has been recovered from the petitioner and he has been falsely implicated by the police.

On the other hand, learned State Counsel, on instructions from ASI Harchetan Singh, has opposed the bail application and submitted that recovery effected in this case is 175 Kg. 500 grams *Poppy Husk* i.e. commercial in nature and petitioner is found to be the owner of Bolero Maxi Plus Truck bearing registration No.PB-03AT-4650, which was used for transportation of contraband, thus, he does not deserve the concession of pre-arrest bail.

Heard learned Counsel for the parties and perused the paper-book.

Affidavit dated 07.09.2020 of Sh. Manjit Singh, DSP, Sub Division Sunam, District Sangrur is already on record.

During investigation, it has been gathered that petitioner purchased Bolero Maxi Plus Truck bearing registration No.PB-03AT-4650 jointly with co-accused Mander Singh from another co-accused, namely, Sukhdarshan Singh and this vehicle was used for transportation of the contraband recovered in this case. It has also surfaced that out of total sale consideration for the aforesaid vehicle, an amount of Rs.60,000/- (sixty thousand only) was transferred from the account of his (petitioner's) wife, namely, Gurjit Kaur in favour of Vishal, who happens to be the son of co-accused Sukhdarshan Singh.

Thus, at this stage, complicity of the petitioner is well apparent being the owner

of Bolero vehicle, hence, his custodial interrogation would be very much necessary to go to the root of the case as well as to unravel *modus operandi* for commission of the crime.

Still further, Section 37 of the NDPS Act being relevant is extracted as under:-

“Section 37 of the NDPS Act – 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 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.”

Perusal of Section 37 of the NDPS Act reveals that its provisions are in the nature of non-obstante clause to the Cr.P.C. including Section 438 thereof and which *inter alia* lays down that no person accused of an offence involving commercial quantity shall be released on bail or on his own bond unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and not likely to commit any offence while on bail.

Both the above conditions are in addition to Section 438 of the Cr.P.C. as well as cumulative and not alternative.

The requirement of satisfaction in terms of Section 37 (1)(b)(ii) (*ibid*) regarding the accused being not guilty is to be recorded on the basis of reasonable grounds and that should be more than *prima facie*.

Since in the present case, this Court has found substance regarding the complicity of the petitioner at this stage and moreover, the recovery of contraband is of commercial quantity, therefore, no case is made out to record any satisfaction in his favour regarding the twin-test in terms of Section 37 (*ibid*) referred above.

In view of the above, this Court has no option except to dismiss the petition.

Ordered accordingly.

Since the main petition stands dismissed, therefore, the pending applications, if any, shall also stand disposed off.

The above observations may not be construed as an expression of opinion on merits of the case.

October 28th, 2020
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes