

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

CRM-M-22062-2020
Date of decision : 07.08.2020

Gurwinder Singh

... Petitioner

Versus

State of Punjab

...Respondent

=====
IN VIRTUAL COURT
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CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr.Mikhail Kad, Advocate
for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

Present petition has been filed under Section 438 of the Cr.P.C. for seeking anticipatory bail to the petitioner in FIR No. 257 dated 18.07.2020, under Section 15 of NDPS Act, 1985 and Section 25, 29 of NDPS Act, 1985 added later on, registered at Police Station Sadar Dhuri, District Sangrur.

The facts of this case are that on 18.07.2020 co-accused Puran Singh, was caught with the truck bearing registration No.PB-13BF-1258 and from the said truck, 126 kgs of poppy husk was recovered. Said Puran Singh was the driver of the truck and the other accused Gurpreet Singh was working as cleaner on the same. Both those persons named the present petitioner as their co-accused by making a statement that they were bringing the said consignment on the instructions from the present petitioner, who is the owner of the said truck. Accordingly, the present case has been registered.

Learned counsel for the petitioner has submitted that the petitioner is a transporter by profession. Goods were transported by the truck of the petitioner to Indore. From there, the truck was loaded with Kirlosker engine machines for being taken to Alamgir. Both the consignments were duly delivered by the truck of the petitioner and were received by the consignees. Thereafter the truck was to return to Punjab. However, the driver and the cleaner played the mischief and they had brought in the said truck, allegedly, some prohibited substance. However, the petitioner had no knowledge of the same in any manner. It is only the driver and the above said cleaner, who have committed the crime. It is submitted that there is no other case against the petitioner. Hence, the petitioner deserves concession of anticipatory bail.

Notice of motion.

Mr. Hitten Nehra, Addl.A.G., Punjab, accepts notice on behalf of the respondent.

Learned counsel for the State submits that the police had received a secret information qua the involvement of the petitioner in narcotic trade by bringing the poppy husk from Madhya Pradesh through his truck. Acting on the basis of said secret information, the recovery has also been made from the truck of the petitioner only. Not only this, even the driver and the cleaner of the said truck, who were arrested along with the consignment of contraband; have made specific statements that they were bringing the contraband material on instructions from the present petitioner only. Still further it is submitted by learned counsel for the State, that another co-accused, namely Mohni, was also arrested in connection with the said offence. He has also made a statement that he and the present

petitioner were doing the business of narcotic substances. There are 9 more cases against the said co-accused Mohni. He has even been arrested and is currently in jail. Therefore, the petitioner happens to be the owner of the vehicle, from which the recovery has been effected; and there have been corroborating statements from three different persons which establish the involvement of the petitioner in the said crime. The case is at the initial stage. The police are to recover the vast dimensions of the trade of the petitioner. Hence the custodial interrogation of the petitioner is required.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, as the normal procedure for curtailing the life and liberty of the accused, the [Cr.P.C.](#) prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance/interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under [Section 438](#) Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision under [Section 438](#) Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the facts of the present case, undisputedly the petitioner is the owner of the conveyance/vehicle from which the

contraband material has been recovered. The driver and the cleaner of the truck, who were arrested from the spot, have specifically named the petitioner as the person who had instructed them to carry the consignment of the recovered contraband. Not only this, even another co-accused, who was not arrested from the spot, but have otherwise been found by the police, has named the petitioner as his accomplice in the trade of narcotics. The said co-accused is also having 9 cases of offence under the NDPS Act. Hence this Court does not find any ex-facie innocence on the part of the petitioner, vis-a-vis the allegations levelled against him. Still further, this Court finds substance in the arguments of the learned counsel for the State that the police are to unearth the true dimensions of the trade of the petitioner, which would require making recoveries of different materials, documents and other articles. Hence the custodial interrogation of the petitioner would be required. Accordingly, if the petitioner is granted protection against his arrest at this stage, that would hamper the free and fair investigation on the part of the police as well. Hence this Court is not inclined to exercise its powers under Section 438 Cr.P.C., so as to protect the petitioner against his arrest.

In view of the above, but without commenting anything more on merits of the case, the present petition is dismissed.

However, nothing said herein above shall affect the merits of the case during trial, if any.

(RAJBIR SEHRAWAT)
JUDGE

07.08.2020
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No