

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 30191 of 2020 (O&M)

Date of decision : 9.10.2020

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Jasvir Singh @ Jasvir Singh Gill

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Kanav Bansal, Advocate for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

CRM-24674-2020

This is an application for placing on record copy of order dated 29.7.2020, passed by this Court as Annexure P-5.

Heard. Allowed subject to all just exceptions.

Annexure P-5 is taken on record.

Main case.

This second petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been filed by petitioner Jasvir Singh @ Jasvir

Singh Gill, aged about 38 years son of Mohinder Singh, resident of village Bukanwala, Near Chelar Centre, Police Station Sadar Moga, District Moga, an accused in FIR No. 4 dated 11.1.2020, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act, 1985') registered at Police Station Sadar, Moga, District Moga.

Briefly stated, facts of the case, as per the prosecution story are that during the investigation of FIR No.3 dated 10.1.2020, under Section 61 of the Punjab Excise Act, 1914, registered with Police Station Sadar, Moga, in which English Rajdhani liquor had been recovered from a room out of two rooms of barra of Jasvir Singh @ Jasvir Singh Gill – present petitioner, it appeared that poppy husk contained in plastic bags had been stored in the second room. The room was accordingly searched by the Police Party, as per Rules and 17 stitched plastic bags and one half bag tied with a rope containing poppy husk, were recovered. The search had been conducted in the presence of DSP City, Moga. Each stitched bag was found to contain 20 kgs of poppy husk, whereas the 18th bag was found to contain 10 kgs of poppy husk, the total being 350 kgs. The recovered contraband was seized. The barra in question was having rooms constructed therein with a shed in front thereof. It was enclosed by a boundary wall with an iron gate installed therein. The petitioner -accused was not found to be present in the barra. Formal FIR was registered and investigation in the case started.

Apprehending his arrest in this case, the accused-petitioner

had approached Judge, Special Court, Moga, for grant of pre-arrest bail. However, his such petition was dismissed by the said Court vide order dated 20.3.2020. Thereafter, the petitioner had knocked at the door of this Court craving for grant of that very relief. However, the said petition, bearing CRM-M-18020-2020 (O&M), was withdrawn by learned counsel for the petitioner by making a statement on 29.7.2020 and the petition was dismissed as withdrawn vide order of the even date. Now the petitioner has approached this Court again asking for relief of anticipatory bail, which request is being opposed by the State counsel.

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

This is a second petition for pre-arrest bail, the first having been withdrawn by counsel for the petitioner.

It is contended that the second petition is being filed for the reason that there has been change in circumstances because the Gram Panchayat of the village and other respectables have furnished an affidavit that the present petitioner has nothing to do with the alleged place of recovery.

However, this plea is totally misconceived. Though the second petition for regular bail can be filed for the reason of change in circumstances, but it is not so in case of petition for grant of pre-arrest bail. Nevertheless I proceed to decide the petition on merits also.

It is specific case of the prosecution that the place of

recovery belongs to the petitioner. He has come up with a plea by furnishing an affidavit by some residents of his village statedly including members of Gram Panchayat and Numberdar etc. that petitioner does not have any concern with the place of recovery . Such type of affidavit rather than helping the petitioner, damages his own case, clearly showing that while absconding, after registration of FIR against him, he is indulging in tampering with the prosecution evidence. Such type of affidavit is not helpful to the petitioner at all, while making out a case for grant of pre-arrest bail.

The recovery of contraband involved in this case is quite heavy, amounting to commercial quantity, attracting bar of Section 37 of the NDPS Act, 1985, which provides that no person accused on an offence involving commercial quantity shall be released on bail if the Public Prosecutor, opposes the application, unless 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. I do not find any reason to record such satisfaction in this case. Therefore, in view of bar of Section 37 of the NDPS Act, 1985, the petition is doomed for failure.

Furthermore, the custodial interrogation of the petitioner -accused is necessary in this case to find out as to from where he had procured such contraband and to whom it was to be supplied. Admittedly, custodial interrogation of the accused is more elicitation oriented rather than questioning the accused, who is having bail, because in case of latter, the accused would certainly not come out

with a full information within his knowledge fearing that the same may prove to be harmful to him during the trial. In case the custodial interrogation is denied to the Investigating Agency, that shall leave many loopholes and gaps in the investigation adversely affecting the same, which is not called for. Simply because in connected FIR under the Excise Act, the petitioner has been granted interim bail by a Co-ordinate Bench, does not help him in making out a case for pre-arrest bail, in this case, which is of far more serious nature.

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

However, nothing discussed above shall have any bearing on the merits of the case.

9.10.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No