

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M- 42520 of 2020 (O&M)

Date of decision : 18.12.2020

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Rafiq

.....Petitioner

vs.

State of Punjab

.....Respondent

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

Present: Mr. D.D. Sharma Advocate for the petitioner.

Mr. R.S. Thind, DAG, Punjab.

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H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been filed by petitioner Rafiq, aged about 44 years son of Ibrahim, resident of village Azimabad, Tehsil Malerkotla, District Sangrur, an accused in FIR No. 114 dated 15.10.2020, for offences under Sections 15, 29 of NDPS Act, registered at Police Station Sandaur, Sangrur, Punjab.

Briefly stated, facts of the case, as per the prosecution version are that on 15.10.2020, a Police Party from Police Station

Sandaaur, District Sangrur, Punjab, while being present at bus stand Khurd in connection with official duty at about 2.00 P.M., received a secret information that Yakoob resident of Nabha Road, Malerkotla and Khan resident of Hatholi were engaged in smuggling of poppy husk in huge quantity from Sri Nagar, in 18 feet Accent Canter of Yakoob and the poppy husk brought by them was being further distributed by Shabir Khan, Lal Husain, Saif Ali son of Ismail Khan resident of village Kuthala, Muhammad Khalid son of Mohammad Yakub, resident of village Bhogiwal, Rafiq son of Ibrahim, (present petitioner) resident of village Sanghan, presently resident of Near Mana Phatak Malerkotla, Bhau resident of village Sanghan and further on that day, Shabir Khan son of Mohammad Khalid was bringing poppy husk in vehicle 'Chota Hathi' for supplying it to various persons. On receipt of that information, a picket was laid near Samadh of Baba Buge in the link road from Village Khurd to village Kuthala. Vehicle Chota hathi was intercepted. Shabir Khan and Mohhammad Khalid were accordingly apprehended carrying 100 kgs of poppy husk in 'Chota hathi' vehicle. Formal FIR had already been got registered after sending the ruqqa to the Police Station on receipt of secret information.

During the course of investigation, apprehending his arrest in this case, accused -petitioner Rafiq had approached the Court of Sessions at Sangrur, seeking pre-arrest bail. However, his such application, which was assigned to Judge, Special Court Sangur, was however, dismissed vide order dated 3.11.2020. Feeling aggrieved,

he has knocked at the door of this Court, craving for grant of similar relief, which prayer is being opposed by the State counsel.

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

Anticipatory bail, dealt with by Section 438 Cr.P.C, is a discretionary equitable relief, which is to be granted by the Court in exceptional circumstances, to protect the innocent persons from unnecessary police harassment and inconvenience and not to act as a shield for the criminals saving them from custodial interrogation by the Investigating Agency. Admittedly, the custodial interrogation is more elicitation oriented, since a person couched in the comparative safety of pre-arrest bail, would certainly not come up out with all the information within his knowledge with regard to the incident. In the instant case, the petitioner is specifically named in the FIR. The contraband in the form of 100 kgs of poppy husk had been recovered from his co-accused – Shabir Khan and Mohammad Khalid. Custodial interrogation of the petitioner -accused is essential to find out as to from which sources he used to receive the contraband and supply it further to which persons. The custodial interrogation of the petitioner is necessary for complete and effective investigation in this case. In case the custodial interrogation of the petitioner is denied to the Investigating Agency, that shall leave many loop holes and lacuna in the investigation, adversely affecting the same, which is uncalled for.

Thus keeping in view of the above discussion, the petitioner

is not entitled to grant of pre-arrest bail and the petition stands dismissed accordingly.

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

18.12.2020
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No