

CRM-M-27517-2021

Date of Decision: 26.08.2021

Satveer Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Anurag Chopra, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, DAG, Punjab.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioner seeks the concession of 'pre-arrest bail' upon FIR No. 277 having been registered at Police Station City, District Barnala, on 07.06.2021, alleging therein the commission of offences punishable under the provisions of Sections 21/22/29/61/85 of the NDPS Act, 1985.

On 16.07.2021, the following order had been passed by this court:-

“Case heard via video conferencing.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.277, dated 7.6.2021, having been registered at Police Station City, Barnala, alleging therein the commission of offences punishable under Sections 21/22/29/61/85 of the NDPS Act, 1985.

Learned counsel for the petitioner submits that the petitioner not having any criminal background, he has been nominated as an accused, allegedly on a disclosure statement made in police custody, by those accused who were apprehended with the contraband, (as per the case of the investigating agency), and therefore in any case such statement having no evidentiary value, he deserves to be admitted to bail.

Notice of motion.

Mr.Saurav Khurana, learned DAG, Punjab, accepts notice at the asking of the court.

Upon query to him, he submits that the quantity of the contraband recovered from the co-accused of the petitioner being commercial quantity, i.e. 1795 loose intoxicant tablets and 33 grams of intoxicant powder from one accused, and 385 grams of intoxicant powder from another accused, with them having stated that they were to supply the same to the petitioner, he does not deserves to be admitted to anticipatory bail.

He however admits that as per his instructions so far, there is no other criminal case against the petitioner and that his name was indeed disclosed by the two co-accused who were apprehended.

Upon query to learned counsel for the petitioner as to how, when there is no other criminal case registered against the petitioner, the police would 'dream up his name' to add him as an accused, with no mala fides alleged against any police official in the petition; and further with no reason given in the petition as to why his co-accused would name him, there is no cogent answer forth coming except to say

that that would be best known to such co-accused.

He further submits that against the other two co-accused, i.e. Jasvir Singh @ Seera and Arashdeep Singh @ Arashi, there are several criminal cases registered and if the petitioner was indeed a person who was buying/selling intoxicant drugs, they would have divulged his name earlier also.

The correctness of that contention would be looked into at a later stage upon a reply being filed by the respondent-State, though I find it, at this stage at least, difficult to accept that a person who has no other criminal case registered against him would suddenly be named by the police as one of the accused when the police would have no reason to suspect any particular person.

Be that as it may, since the FSL report has not come as yet, to determine as to whether the 'loose powder' was indeed any intoxicant powder or whether the entire material seized from the co-accused of the petitioner was indeed commercial quantity of contraband or not, the petitioner is directed to join investigation within a week and upon him so joining if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this court.

It is to be noticed that a coordinate bench of this court in Inderjeet Singh @ Laddi vs. State of Punjab (CRM-M-13140 of 2012, decided on 31.1.2014) has held that till it is determined as to whether any contraband which is recovered from an accused actually falls within commercial quantity or non-commercial quantity, normally an accused should be admitted to interim bail, which judgment has been respectfully followed by this court in other cases.

A gazetted officer is directed to file a reply to the petition.

Adjourned to 26.8.2021.”

Today, learned State counsel on instructions from ASI Hardeep Singh, submits that actually the petitioners' custodial interrogation is not required.

Obviously therefore, even Section 37 of the NDPS Act, 1985, would not come 'into play', because bail to a person who is an accused for the commission of an offence punishable under that Act is to be denied if the Public Prosecutor opposes such bail application.

In the present case, with the investigating officer himself stating that the custodial interrogation of the petitioner is not required, obviously the learned Public Prosecutor would have no reason to state otherwise.

This is other than the fact that, admittedly, no recovery is shown to have been made from the petitioner himself, the recovery of the contraband in question (as per the case of the investigating agency), being from his co-accused Jasvir Singh and Arshdeep Singh.

In view of the stand of the investigating officer, this petition has been rendered infructuous and is disposed of as such.

However, if the petitioners' custodial interrogation is required at any stage hereinafter, in the context of the FIR in question, he would be given 7 days notice before arrest, duly shown to be served upon him.

August 26, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.