

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

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CRM-M-30338-2021.

Date of Decision: 24.09.2021.

Gurwinder Singh

....Petitioner.

Versus

State of Punjab and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Ms. Khushbir K. Bhullar, Advocate for petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This second petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Gurwinder Singh** in case FIR No.82 dated 06.07.2020 under Sections 21 and 29 of NDPS Act, registered at Police Station Special Task Force, Mohali, District SAS Nagar.

Learned counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are totally false and frivolous and there is no iota of truth therein. She further urges that though co-accused Paramjit Kaur @ Bhola is the real aunt of petitioner, however, due to previous enmity between Balraj Kaur, mother of petitioner and co-accused Paramjit Kaur @ Bhola, over a property dispute, petitioner has been roped in as accused on the basis of false disclosure statement of co-accused Paramjit Kaur @ Bhola. She further urges that petitioner was not present at the alleged

address from where the police allegedly recovered the contraband from co-accused. She further urges that though three other co-accused named in the FIR were arrested by the police party but they never disclosed the name of petitioner in the commission of alleged offence, whereas co-accused Paramjit Kaur @ Bhola falsely nominated the name of petitioner, which clearly establishes the fact of her ill-will and personal enmity with the petitioner. She further urges that even otherwise Police did not comply with the statutory provisions of Sections 42 and 50 of NDPS Act and further conducted the search of rented accommodation of petitioner in the absence of independent witness and Gazetted Officer and as such alleged recovery of 333 grams of Heroin and alleged drug money of more than Rs.3,00,000/- is planted one. She further urges that though previous petition (CRM-M-26343-2020) seeking pre-arrest bail moved by the petitioner was dismissed by this Court, vide order dated 25.01.2021 and now there is change in scenario as after completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) has already been presented against the co-accused. She further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that as disclosed by co-accused Paramjit Kaur @ Bhola, as she used to purchase contraband from petitioner-Gurwinder Singh and his mother-Balraj Kaur @ Pinki, then raid was conducted at the rented accommodation bearing House No.420-SF, Eldeco Green Colony, Nakodar Road, Jalandhar, of petitioner and that too in the

presence of Jasbir Kaur, owner of building and other respectables including neighbours and during the course of search of said premises, drug money amounting to Rs.3,50,290/- and contraband (Heroin) weighing 333 grams were recovered. He further urges that above said search and recovery was duly videographed by raiding party. He further urges that Jasbir Kaur, owner of the building, had produced Rent Agreement, in terms of which, above said residential accommodation was let out in favour of petitioner and his mother Balraj Kaur @ Pinki. He further urges that petitioner is the main accused and the recovery of contraband (Heroin) effected from the rented accommodation of the petitioner falls under "commercial quantity". He further submits that despite issuance of non-bailable warrants and the raids conducted by the police at the hideouts of petitioner, latter could not be arrested and then Look Out Circular No.1703/CT-2 dated 28.06.2021 of petitioner was issued and further vide order dated 01.07.2021, passed by Additional Sessions Judge, Jalandhar, proclamation against the petitioner was issued. He further urges that antecedents of petitioner are not upto the mark as in another case FIR No.353 dated 03.12.2020 under Section 21(b) of NDPS Act, registered at Police Station Phillaur, proclamation proceedings have already been initiated against him, whereas he has already been declared 'proclaimed offender', vide order dated 04.02.2021 passed by learned Chief Judicial Magistrate, Jalandhar, in case FIR No.192 dated 07.07.2020 under Sections 186, 307, 353 and 427 IPC read with Section 34 IPC, registered at Police Station Division No.7, Jalandhar. He further submits that first petition (CRM-M-26343-2020) for grant of pre-arrest bail moved by petitioner was dismissed on merits by this Court, vide order dated 25.01.2021. He further submits that there is no change in scenario after

dismissal of earlier petition moved by the petitioner. He further urges that in view of nature of offence committed by petitioner, his custodial interrogation is required to unveil the truth and as such he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition as well as reply furnished at the instance of respondent-State.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly huge quantity of contraband (333 grams Heroin), which falls under “commercial quantity” and drug money worth Lakhs of rupees were recovered from the rented accommodation of petitioner. The first petition (CRM-M-26343-2020) for grant of pre-arrest bail moved by petitioner was dismissed on merits by this Court, vide order dated 25.01.2021. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely

to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail and even otherwise the specious reason of change in circumstance cannot be invoked for successive anticipatory bail applications, once it is rejected by speaking order.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

24.09.2021

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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No