

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-38964-2020 (O&M)
Date of Decision:-24.8.2021

Darshan Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Preetinder S. Ahluwalia, Advocate with
Mr. Shaurya Puri, Advocate and
Mr. H.S. Randhawa, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by SI Sahab Singh.

Mr. NPS Mann, Advocate for the complainant.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.(Oral)

CRM-25457-2021

In view of the reasons mentioned in the application, the same is allowed and the amended petition annexed with the application is taken on record.

CRM-M-38964-2020

1. The petitioner has approached this Court seeking grant of anticipatory bail in respect of a case registered vide FIR No.181 dated 24.10.2020 at Police

Station Ghagga, District Patiala under Sections 302, 120-B and 34 of Indian Penal Code.

2. At the time of issuance of notice of motion on 25.11.2020, the following order was passed:

“As per case of the prosecution, the petitioner's son allegedly gave 'Celphos' tablets to the complainant's son on the pretext that the same was for relieving constipation.

It is further the case of the prosecution that petitioner's son Baljit Singh, who is named in the FIR was arrested and who during the course of interrogation suffered a disclosure statement to the effect that he in connivance with his father (petitioner) had given 'Celphos' tablets to the deceased as the deceased was having illicit relation with sister of Baljit Singh.

The learned counsel for the petitioner has contended that it is highly unlikely that the deceased would have consumed the tablet given by the petitioner's son especially when there was some kind of enmity between them on account of the alleged illicit relation between the deceased and the daughter of the petitioner.

Notice of motion for 08.04.2021.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438(2) Cr.P.C.”

3. Learned State counsel, upon instructions from SI Sahab Singh, has informed that pursuant to interim directions issued by this Court, the petitioner has since joined investigation.

4. Learned counsel for the complainant has, however, opposed the petition on the ground that since in the disclosure statement of Baljit Singh i.e. son of the petitioner he has categorically stated that 'Celphos' tablets had been administered to the deceased in connivance of his father i.e. the petitioner Darshan Singh, no case for grant of bail is made out. It has further been submitted that during the course of investigation even offence under Section 302 IPC has been added, which would make the offence all the more heinous disentitling the petitioner for grant of bail.
5. I have considered rival submissions addressed before this Court.
6. It is not in dispute that the petitioner is not named in the FIR, wherein the allegations were raised only against son of the petitioner namely Baljit Singh. However, subsequently on the basis of a disclosure statement, the petitioner came to be named, wherein the role attributed to him is that the main accused Baljit Singh had administered 'Celphos' tablets in connivance with the petitioner. The co-accused Baljit Singh has already been granted bail by this Court, wherein while granting bail this Court observed as under:

“..... The case hinges on the complainant's version which is based on what the deceased had allegedly disclosed to him as regards giving tablets by the petitioner to deceased. The tablets said to be 'Sulphas' tablets, upon chemical analysis have been found to contain Aluminium Phosphide. In 2003(1)SCC 169, Jaipal Vs. State of Haryana, the Hon'ble Supreme Court while acquitting the appellant in respect of offence under section 302 IPC, on account of lack of circumstantial evidence took note of the opinion given by the doctor during cross-examination and also of an article titled 'Taxicology – Acute Aluminum Phosphide Poisoning in Northern India' written by Dr. Mitra Basu and Prof. S.B. Siwach, Head, Deptt. of Medicine, Post

Graduate Institute of Medical Sciences, Rohtak and published in Current Medical Journal, Vol. I, No. 5, July 1995, to the effect that Alumunium Phosphide poison has a characteristic of strong pungent smell which renders it improbable to be administered deceitfully or to be taken accidentally.

7. A Division Bench of this Court in 2010(3) RCR(Criminal) 112 Anita Vs. State of Haryana, while referring to various medical journals on Toxicology held as follows:

“21. Such extracts from the Journals on Toxicology show that Aluminium Phosphide (celphos) is available in the form of chalky white tablets used as pesticide and rodenticide. When these tablets are taken out of the sealed container, they come in contact with atmospheric moisture and the chemical reaction takes place liberating phosphine gas. All the published works are to the effect that Aluminium phosphide i.e. celphos tablet is not homicidal as it cannot be taken accidentally as it emanates highly pungent smell. In fact, the Hon'ble Supreme Court in Jai Pal v. State of Haryana, 2002(4) RCR (Criminal) 486 : AIR 2002 Supreme Court 3447, has quoted extensively from Modi's Medical Jurisprudence and Toxicology as well as the paper titled as "Toxicology – Acute Aluminium Phosphide Poisoning in Northern India" written by Dr. Mitra Basu and Prof. S.B. Siwach, Head, Deptt. Of Medicine, PGIMS, Rohtak, and has concluded that Aluminium Phosphide on account of its very pungent smell, which can drive out all inmates from house if left open, cannot be taken accidentally.”

8. Keeping in view the opinion of experts as expressed in various journals which have been relied upon by this Court in Anita's case (supra), pertaining to the characterstic pungent smell of

Aluminium phosphide and that the smell makes it highly improbable to be administered deceitfully, it will certainly be debatable as to whether the deceased had consumed the tablets provided by petitioner despite the fact that petitioner didn't approve of the relationship of the deceased with petitioner's sister.....”

7. Having regard to the aforestated position, wherein this Court finds that the petitioner came to be named pursuant to a disclosure statement, the veracity and admissibility of which would be established and while also noticing that under normal circumstances, it is difficult to administer ‘Celphos’ tablets by deceit and while also noticing that the petitioner has already joined investigation, his custodial interrogation is not warranted. The petition, as such, is accepted and the interim directions issued by this Court vide order dated 25.11.2020 are hereby made absolute, subject to the condition that the petitioner shall join investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438(2) Cr.P.C.

24.8.2021

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No