

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

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CRM-M No.40910 of 2020
DATE OF DECISION : 18th JANUARY, 2021

Gosha

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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In virtual Court

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Present : Mr. Gursimran Singh Bawa, Advocate for the petitioner.

Mr. V. G. Jauhar, Sr. DAG, Punjab.

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RAJBIR SEHRAWAT, J. (Oral)

The present second petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.06 dated 16.01.2020 registered under Sections 21/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sadar Gurdaspur, District Gurdaspur.

Affidavit filed by Sukhpal Singh, PPS, DSP City, District Gurdaspur, is taken on record.

It is submitted by counsel for the petitioner that the case against the petitioner is totally concocted. He is not named in the FIR. His name has been sought to be involved only on the basis of disclosure statement of the co-accused from whom 5 gms heroin and 1012 capsules of Tramadol Hydrochloride has been recovered. Besides the alleged disclosure statement, there is nothing against the petitioner to incriminate him in the present case. The petitioner shall join the investigation. Hence, the petitioner deserves to be protected against his arrest.

On the other hand, learned State Counsel, on instruction from ASI Harpal Singh, has submitted that the petitioner is a habitual offender. His name has specifically surfaced during the investigation with specific allegations. The co-accused, from whom the recovery has been effected, has specifically mentioned that it is the petitioner from whom the said co-accused has taken the consignment. There are as many as 21 more cases, including the cases under the NDPS Act, pending against the petitioner. The police require custodial interrogation of the petitioner to unearth the true dimensions of the participation of the petitioner in the present crime and to collect the evidence against the arrested co-accused, as well as, against the petitioner. Hence, the petitioner does not deserve to be granted the concession of anticipatory bail.

No doubt, the accused as a citizen has a fundamental right to life and liberty. However, that right to life and liberty can very well be curtailed in accordance with the procedure established by law. As per the procedure prescribed for Criminal Administration of Justice, the normal procedure for curtailing the life and liberty of the accused, Cr.P.C. prescribes that the Investigating Officer can arrest an accused even without warrant and without assistance/interference of the Court. However, to ensure that a person is not unduly harassed, at least in those cases, where the circumstances are leading, predominately, towards ex-facie innocence of the accused, the Courts have been given special and extra-ordinary power under Section 438 Cr.P.C. This statutory power of granting pre-arrest bail is so extraordinary that it is not even available in all parts of the country; and it is not available even through-out the country qua some offences under some special statutes. Hence, right to get anticipatory bail is not any fundamental right. The provision of

Section 438 Cr.P.C. provides only a remedy to an accused and leaves the extent of right to liberty to be decided by the Court.

Coming to the facts of the present case, there is huge recovery; allegedly effected from the arrested co-accused. The arrested co-accused is stated to have specifically named the present petitioner as the supplier of the consignment. The record of the petitioner, which shows involvement of the petitioner in similar cases, also does not create any situation favourable to the petitioner. Hence, this court does not find any mitigating circumstance and *prima facie* innocence on the part of the petitioner vis-à-vis the allegations leveled against him. Otherwise also the petitioner is resident of Himachal Pradesh. Therefore, there is no reason for the Punjab Police to falsely involve the petitioner in a criminal case in Punjab; by fabricating allegations or evidence against him. The Punjab Police would be initiating any proceedings against the petitioner only when they have a fair information qua the petitioner having committed any crime. Still further this court finds substance in the argument of the counsel for the State that the custodial interrogation of the petitioner would be required to collect the evidence against the arrested co-accused, as well as, qua the petitioner. Hence, this court is of the view that if the petitioner is protected against his arrest, at this stage, then free and fair investigation of the case shall also be adversely affected.

In view of the above, finding no merit in this petition, the same is dismissed.

18th JANUARY, 2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No