

In the High Court of Punjab and Haryana at Chandigarh

(211)

CRM-M No. 13772 of 2022

Date of Decision: 24.5.2022

Parbati alias Parbat Singh alias Parwat Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Balbir Kumar Saini, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The instant petition has been filed under Section 438 Cr.P.C., seeking the indulgence of anticipatory bail to the petitioner.
2. In FIR bearing No. 207 of 5.11.2021, registered at Police Station Nihal Singh Wala, District Moga, offences constituted under Sections 21, 29 of the NDPS Act, 1985, are embodied.
3. On 1.4.2022, this Court had made the hereinafter extracted order:-
 - “1. Notice of motion.
 2. Ms. Bhavna Gupta, DAG, Punjab waives service of notice on behalf of respondent-State.
 3. Status report/reply be filed within three weeks.
 4. List on 24.05.2022.
 5. Since it is averred in the petition, that the weight of the recovered narcotic substance, as became effectuated at the crime site from the alleged conscious, and, exclusive possession of one, Gurdeep Singh, is about 100 grams. Therefore, and, also when the inculcation, as assigned to the present bail petitioner, is anchored upon the factum that during the custodial interrogation of the principal offender, the latter naming the accused to be the

supplier of the seized narcotic drug, thereupon, since the weight of the seized narcotic substance falls within the ambit of intermediate quantity thereof. Consequently, at this stage, this Court deems it and, appropriate to admit the bail petitioner to ad-interim bail. Consequently, in the event of the arrest of the bail petitioner, the investigating officer may not arrest the bail petitioner, however, subject to his furnishing personal, and, surety bonds in the sum of Rs.50,000/- each, to the satisfaction of the arresting officer, and, also subject to his rendering co-operation to him, in the investigations to be carried into the offences mentioned in the present FIR.”

4. The learned State counsel has placed on record reply on affidavit, to the instant petition, which is taken on record. A perusal thereof underscores the factum, that the incriminatory role, as assigned to the present petitioner, is, inasmuch as, his being a supplier to the principal offender, of the seized from his conscious, and, exclusive possession the narcotic drug, at the crime site. The above role is submitted to arise from the principal offender making the above inculcation in his disclosure statement, as made to the investigating officer concerned, during the latter putting him to custodial interrogation.

5. Though, the present petitioner also becomes amenable for his being tried along with the principal offender, rather as a conspirator in respect of the petition offences, but the weight of the seizure is relevant for determining whether the present petitioner becomes entitled for becoming enlarged on anticipatory bail.

6. A perusal of paragraph (2) of the reply, furnished to the petition, discloses that upon the seized heroin, as became sent for analysis, the FSL concerned, making an affirmative opinion thereon. It has also been submitted by the learned State counsel, that the weight of the seized heroin is about 100 grams. Since the weight of the narcotic drug (supra) makes it fall within the

NDPS Act, are not applicable thereon, hence, the indulgence of anticipatory bail is to be accorded, to the bail applicant-petitioner. Moreover, also when no evidence is adduced before this Court by the prosecution, suggestive of the fact, that in the event of the petitioner, becoming admitted to anticipatory bail, there is every likelihood of his fleeing from justice, and, tampering with the prosecution evidence.

7. However, the learned State counsel submits, that since the bail applicant-petitioner is a habitual offender, hence thereupon, in case the facility of bail is granted to him, there is every likelihood of his re-indulging in penal activities, and, also of his abusing the facility of anticipatory bail.

8. However, the vigour of the afore made submission, of the learned State Counsel, before this Court, can be mitigated, by imposition of stringent conditions, upon the petitioner-bail applicant.

9. Consequently, the instant petition is allowed, and, the order made by this Court on 1.4.2022, is made absolute on the same terms and conditions.

10. In addition, in case, the bail applicant-petitioner re-indulges in criminal activities, thereupon, it is open to the investigating officer concerned to forthwith arrest the bail applicant-petitioner, and, thereafter to produce him before the learned Magistrate concerned, for the latter making an order for his being put to judicial custody.

11. The afore observations are meant only for the disposal of the present petition, and, shall not affect the merits of the trial arising from the FIR (supra).

(SURESHWAR THAKUR)
JUDGE

May 24, 2022
Gurpreet

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