

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-31496-2022

Date of Decision:22.07.2022

Kashif Farooqi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Suvir Sidhu, Advocate,
for the petitioner.

Ms. Amarjit Kaur Khurana, D.A.G., Punjab.

VINOD S. BHARDWAJ , J.(Oral)

The petitioner has approached this Court under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in case FIR No.78 dated 12.06.2022 under Section 22 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”) (the offences under Sections 25, 29, 61, 85 of the NDPS Act have been added later on), registered at Police Station Sadar Ahmedgarh, District Malerkotla.

There is a recovery of 6000 intoxicant tablets from the car of the petitioner which is claimed to be driven by co-accused Jaswinder Singh, who was apprehended at the spot.

Learned counsel appearing on behalf of the petitioner contends

that the petitioner cannot be presumed to be aware of the contraband that might be carried out by co-accused Jaswinder Singh who borrowed the car from the petitioner and that there can be no presumption attached to the petitioner. He has placed reliance on the judgment of this Court in the matter of **Jarnail Singh Versus State of Punjab**, dated 08.02.2022 passed in CRM-M-5110-2022 as well as on the judgment of the Hon'ble Supreme Court in the matter of **Surinder Kumar Khanna Versus Intelligence Officer, Directorate of Revenue Intelligence, (2018) 8 Supreme Court Cases 271.**

A reference is also made to the judgment of this Court in the matter of **Piara Singh Versus State of Punjab**, dated 08.02.2019 passed in CRM-M-55799-2018.

As per allegations, on 12.06.2022 ASI Harbux Singh and other police officials, were present at T-Point Rohira, in connection with nakabandi. That police party was in a private vehicle along with laptop, printer etc. At about 6.00 P.M., ASI Harbux Singh received a secret information that Jaswinder Singh son of Gurpreet Singh resident of Bhogiwal P.S. Sadar Ahmedgarh District would proceed from village Balewal towards main road via link road in his car bearing registration No.PB-28H-0104 make Kwid for supplying intoxicant tablets and if nakabandi would be held then the above said Jaswinder Singh could be apprehended along with intoxicant tablets. Considering that information, ASI Harbux Singh got registered case against Jaswinder Singh by sending ruqa to the police station and he also requested for sending another Investigating Officer at the spot.

After some time, SI Jagtar Singh and other police officials held

nakabandi at the relevant place and arrested the co-accused and from the said car, recovery of 150 strips containing 20 tablets each i.e. total 3000 intoxicant tablets make Buprenorphine and Naloxone Sublingual Tablets IP Addseal-N (0.4/0.1) having batch No.6122205 MHG.MAY/2022 EXP.APR.2025 from one transparent envelope and 300 strips containing 10 tablets each i.e. total 3000 intoxicant tablets make Buprenorphine and Naloxone Sublingual Tablets IP addseal-N (2/0.5) having batch no.6132202 MHG. MAR./2022 EXP. FEB.2025 from another transparent envelope was done.

During interrogation of co-accused Jaswinder Singh, it came to notice that that was involvement of petitioner-accused Kashif Farooqi in the case and car bearing registration No.PB-28H-0104 make Kwid was also owned by petitioner-accused Kashif Farooqi. Accordingly, he was nominated in the case and offences under Section 29 and 25 of NDPS Act were added.

It is not in dispute that the recovered quantity of the contraband falls within the commercial quantity.

Learned counsel appearing on behalf of the petitioner, however, contends that the co-accused Jaswinder Singh was apprehended for being in possession of the commercial quantity of the contraband and that the petitioner was neither named in the FIR nor apprehended at the spot. He further contends that nothing has been recovered from the petitioner on the disclosure statement made by co-accused Jaswinder Singh. Hence, the said disclosure statement which has not led to discovery of any new fact, is inadmissible in evidence. It is contended that the petitioner is being sought to be implicated with the aid of Section 25 of the NDPS Act and in the

absence of knowledge being attributable to the petitioner regarding the contraband being carried by the co-accused, the criminal liability cannot be fastened. He offers an explanation that the petitioner as well as the co-accused are working in the De-addiction Centre in the village Kup Kalan, Tehsil and District Malerkotla and that the said co-accused had been using the car of the petitioner on various occasions. He, thus, contends that the petitioner cannot be arraigned as an accused when the evidence to link the petitioner with the commission of the offence is amiss.

Reliance in this regard is made to the judgment referred in **Jarnail Singh's case (supra)**, wherein a Co-ordinate Bench of this Court had granted the concession of pre-arrest bail, where the recovery had been effected from co-accused Amandeep Singh @ Aman and the petitioner-Jarnail Singh had been nominated as an accused on the basis of disclosure statement made by such co-accused. The aforesaid judgment, however, is not applicable to the facts of the present case inasmuch as in the said case, there was a simpliciter disclosure of the co-accused and there was nothing to link that the vehicle, in question, was owned by the petitioner. The aforesaid judgment would, thus, not be applicable to the facts of the present case.

While referring to the judgment in **Surinder Kumar Khanna's case (supra)**, the learned counsel has made a reference to the position in law laid by the Hon'ble Supreme Court that when the recovery of contraband is effected from a car, conviction of an accused on the basis of confessional statement of the co-accused, in the absence of any other material available suggesting involvement of the accused, would not be sustainable.

Without disputing the aforesaid proposition of law, it has been held applicable in a situation where the entire evidence has been led and

after a concluded investigation. The judgment in Surinder Kumar Khanna's case (supra) has been passed while being seized of a criminal appeal, after a prolonged trial. Resultantly, the entire evidence was brought before the Courts and as such the opinion as regards conscious possession had been passed on consideration of entire material.

The aforesaid judgment of the Hon'ble Supreme Court would not be applicable to the facts of the instant case inasmuch as the case is still at the initial stages of investigation and the evidence is yet to be collected. It would be premature to observe or to hold that the Investigating Agency would not be in a situation to lay hold to any material, in case, custodial interrogation of the petitioner is undertaken.

In so far as judgment passed in Piara Singh's case (supra), is concerned, in the said judgment, the concession of anticipatory bail had been extended to Piara Singh on the question of conscious possession being debatable. The vehicle i.e. the Truck involved in the said case was not owned by Piara Singh, accused. Consequently, even the aforesaid judgment is not applicable to the facts of the present case.

As commercial quantity of contraband has been recovered and undisputedly the vehicle owned by the petitioner was deployed in transportation of the said contraband, it is essential that the custodial interrogation of the petitioner is required so as to unearth the racket and cartel of the NDPS trade being carried out in the State of Punjab and being routed through the persons who have been employed in the mental hospitals and De-addiction Centres. An unhindered investigation is felt necessary to go to the root of the matter. The petitioner cannot simply feign ignorance about the drugs being transported in his vehicle, considering that large

quantity of contraband has been seized.

Finding no merit in the instant petition, the same is accordingly dismissed.

July 22, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No