

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41206-2022
Reserved on: 15.09.2022
Pronounced on: 20.09.2022

Shishpal Singh ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vipin Mahajan, Advocate for the petitioner.
Mr. Jashandeep Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
21	25.04.2022	Tibber, District Gurdaspur, Punjab	18 (C) & 29 of NDPS Act (Section 29 of NDPS Act added later on)

1. The petitioner, apprehending arrest for violating the above-mentioned provisions of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above had come up before this Court under Section 438 Cr.P.C. seeking anticipatory bail.
2. In paragraph 12 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 25th April 2022, a police team was conducting checking to detect crime. In the meanwhile, a truck came and on noticing the police, the person sitting on the conductor side, tried to abscond, it raised suspicion, and he was over powered. After that the police allegedly complied with the provisions of NDPS Act and CrPC, and conducted the search of truck, and recovered a bag that was lying on the front seat, between the legs of the person, (Sandeep Masih), who had tried to flee but could not do so because of the presence of police. The bag contained 2.6 kgs of opium. After that he along with truck driver Rajinder Singh (Petitioner's brother) were arrested. During interrogation, Sandeep Masih disclosed to the police that he had transferred the payment of opium to the petitioner Pal Singh (Shishupal Singh) through Google pay.
4. Ld. Counsel for the petitioner contends that the pre-trial incarceration would cause an irreversible injustice to the petitioner and family.
5. Ld. counsel representing the State opposes bail.

REASONING:

6. The substance involved in the present case is opium, and weighs 2 kilo grams and 600 grams. Entry no. 92 of the table specifying small and commercial quantities specifies the quantity greater than 2.5 kilo grams as commercial quantity and lesser than 25 grams as small. Thus, the quantity allegedly involved in this case is commercial. However, the evidence against the petitioner Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. The petitioner's explanation is that he has been nominated on the basis of disclosure statement, which has no evidentiary value, and has been implicated because he is the real brother of Rajinder Singh, the truck's driver. These explanations are inconsequential because the evidence against the petitioner is transfer of money by Sandeep Masih in the petitioner's account through Google pay. A perusal of the petition does not refer to any explanation regarding such transfer.

8. The grounds taken in the bail petition do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. Thus, the petitioner has failed to make a case for bail at this stage.

9. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

10. In *State rep. by CBI v. Anil Sharma*, (1997) 7 SCC 187, Hon'ble Supreme Court holds,

[6]. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger

of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

11. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 Cr.P.C.

12. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

20.09.2022
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.