

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

**CRM-M-60983-2022
DECIDED ON: 27.12.2022**

DHARMINDER SINGH

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Hundal, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The instant petition has been filed seeking anticipatory bail in FIR No.06, dated 23.03.2015 (Annexure P-1), under Sections 21 & 29 of the NDPS Act, Section 307 of the IPC, Section 25 of the Arms Act and Section 14 of the Foreigners Act, registered at Police Station State Special Operation Cell, Amritsar (Punjab).

Learned counsel for the petitioner contends that the FIR was got registered merely on a secret information on 02.03.2015 naming three persons Harpreet Singh @ Happy, Bau son of Ajit and Ajit Singh @ Jeeta. The admitted fact is that the petitioner is son of co-accused Ajit Singh @ Jeeta. In support of his assertion, Mr. Hundal, learned Advocate has referred to the relevant part of the judgment dated 17.03.2021, vide which Ajit Singh @ Jeeta was acquitted by the trial Court with the following observation:-

"18. After going through the evidence led by prosecution when seen minutely, this Court considers that there remains no reason to disagree with the arguments advanced by Sh. Mohit Mahajan, Advocate, learned Defence counsel as to that no connection of accused with

the recovered contraband could be established and even after recovery of contraband, the prosecution failed to establish any connection of accused with Heroin recovered in this case. As per prosecution story it itself, recovery has been effected on the border of Indo-Pakistan. Concededly contraband was recovered in the absence of accused.

19. In the present case, when prosecution tried to say that some persons from India side also fired upon the BSF officials/Naka party, the documents relied upon by the prosecution Ex. PY in itself makes it clear that firing was done upon Naka party from across the border only and not from the India side. Though, the present case, in Ruqa Ex.PW-3/M, it comes out that a secret information was received with regard to that Harpreet Singh alias Happy son of Gubaj Singh, Bau son of Ajit Simngh and Ajit Singh alias Jeeta, all residents of Dauke, P.S. Gharinda, District Amritsar, are indulging in smuggling activities with connivance of Pakistan smuggler Bilal, resident of Narowal Pakistan and they all are trying to smuggle the big consignment of Heroin and Arms and ammunition across Indi-Pak border in the area of Border out Post at Dera Baba Nanak Road in the night time. If joint operation with BSF party be conducted and proper ambush may be planned then the heavy consignment of Heroin and arms and ammunition can be recovered and accused can be apprehended, but till the time of recovery even in recovery memo Ex.PW-3/A, name of Ajit Singh was not mentioned as accused. Proceedings were being carried out by I, INSPECTOR showing accused to be unknown person. In case, there should have been any secret information with the Police with regard to involvement of accused, in the recovery of this case, then, at the time of recovery, and at the time of preparing other documents, name of accused Ajit Singh alias Jeeta would have been mentioned as

accused on recovery memo of Heroin Ex.PW-3/A, on recovery memo of 30 bore Pistol Ex.PW-3/B, on recovery memo of pipe Ex. PW-3/D and on recovery memo of 18 empty packets of cloth. Meaning thereby, version of learned Defence Counsel with regard to that story with regard to secret information regarding involvement of accused is fabricated by the prosecution after recovery of Heroin and other articles in the present case proves to be sustainable.

20. For proving guilt of accused under Section 21(c) of NDPS, Act and for other offences, prosecution was to establish that accused was found in conscious possession of contraband taken into police custody by the officials of BSF. No doubt, in view of the provisions of section 35 and 54 of NDPS, Act, once possession is found or proved then accused is presumed to be in conscious possession and if the accused takes a stand that he was not in conscious possession, he has to establish the same, but when prosecution fails to establish the possession of accused over the contraband recovered, then this presumption of accused being in conscious possession can not be taken in favour of the prosecution. In case titled as Dharam Pal Vs State of Punjab 2010 (4) RCR (Criminal) 504, Hon'ble Supreme Court held that to make out an offence under Section 18 of the Act, possession has to be conscious possession. It was held that initial burden of proof of possession lies on prosecution and once it is discharged only then, the burden would shift on the accused. Hon'ble Bombay High Court in case titled as Nazma Ismail Shaikh Vs State of Maharashtra 2001(5) BCR 407, has held that when prosecution could not prove beyond doubt that recovery was effected from accused. In such a case accused is not required to offer any explanation about possession of contraband. Presumption under Section 35 of

the Act, therefore, neither arises nor is required to be rebutted by the appellant/accused. Similarly, Hon'ble Delhi High Court in case titled as "Chand Singh and Anr. Vs The Narcotic Control Bureau and Ors." 2016 (1) JCC 1 held that law arises a statutory presumption of conscious possession, where physical possession of the contraband established. This is a rebuttable presumption. It should be for the accused to rebut the presumption of conscious possession, once the prosecution has established physical possession of the contraband.

21. Concededly, in the present case, contraband was recovered by the police officials at their own level. No link of accused Ajit Singh alias Jeeta with recovery could be established on file.

22. Further to create some link of accused with the recovered material, prosecution has tried to rely upon statement of one Karamjit Singh, before whom as per prosecution, accused Ajit Singh alias Jeeta made extra judicial confession with regard to his involvement and connection with the recovery of Heroin in the present case. As per prosecution in May, 2017 Ajit Singh accused confessed his guilt before PW-12 Karamjit Singh. Firstly, statement of Karamjit Singh under Section 161 is shown by ASI Amit Sharma who has not been examined by prosecution. Karamjit Singh appeared in witness box as PW-12. He stated that he is not knowing to Ajit Singh @ Jeeta and his statement was never recorded in this case. On his this deposition, this witness has been declared hostile and Ld. Addl. P.P. for the State was allowed to cross- examined this witness. He was thoroughly cross-examined by Ld. Addl. P.P. for the State. In the cross-examination he stated that accused Ajit Singh alias Jeeta never made any extra judicial confession before him with regard to his involvement or with regard to recovery of

Heroin from the Border of Pakistan. In his cross-examination he categorically stated that never recorded any statement mark-P1 on 04.09.2017. He denied that Ajit Singh, told him that he is having any connection with Pakistani Smuggler. He also denied this fact that he ever recorded to the Police that he and Ajit Singh started drinking from thereby the shop and Ajit Singh told him that his village falls near the INDO-PAK border and he is in contact with the Pakistani Smuggler or that he is drawing the business of smuggling across the INDO-PAK border or that his son Dharminder Singh, Harpreet Singh son of Bar Singh, resident of Dauke are also indulged in activity of INDO-PAK cross border smuggling or that they have managed one consignment from the Pakistani Smuggler in the area of Dera Baba Nanak 164 B BSF near barbered line of INDO-PAK border.

23. If seen present case was registered in the year 2015 but after recording the statement of Karamjit Singh PW-12 by showing that accused Ajit Singh made. disclosure statement before him accused Ajit Singh has been involved in the present case. Report under Section 173 Cr.P.C. regarding extra judicial confession made by accused is silent. In these circumstances, by taking the benefit of some recovery of Heroin from Indo-Pak Border possibility of involving of accused cannot be ruled out.

24. When as per law, extra judicial confession without corroboration cannot be made basis for the conviction, projected case of the prosecution with regard to that accused Ajit Singh alias Jeeta made any extra judicial confession with regard to his guilt before Karamjit Singh, remained unproved on file because Karamjit Singh who was star witness with the prosecution to connect the accused with the recovery, did not support the prosecution version and categorically stated that no such judicial

confession was made by Ajit Singh before him. Further to create some link of accused with the recovered material the prosecution has relied upon disclosure statement of accused Ex. PW6/A, because PW7 retired DSP Harbhajan Singh stated that on 14.11.2018 during interrogation, accused Ajit Singh alias Jeeta, made a disclosure statement Ex.PW-6/A before SI Binderjit Singh, regarding the commission of offence. With the assistance of learned Addl. P.P. for the State and learned counsel for the accused, when this disclosure statement is seen minutely, then, it can be safely said that this disclosure statement relied by the prosecution, is of no help to the prosecution."

The learned counsel for the petitioner has further asserted that the contraband, which consisted of 18 packets, weighing 17.828 kgs of heroine, was recovered from an open piece of land and the case was registered against the petitioner and other accused merely on the basis of extra judicial confession. The learned counsel further argued that the father of the petitioner namely Ajit Singh @ Jeeta stands acquitted by the trial Court vide judgment dated 17.03.2021, holding that the prosecution could not establish that Ajit Singh @ Jeeta said accused was found in conscious possession of the contraband.

Notice of motion.

On the asking of the Court, Mr. Rajiv Verma, DAG, Punjab accepts notice on behalf of the respondent-State, who submits on instructions from SI Daljit Singh that the concession of anticipatory bail under Section 438 Cr.P.C., cannot be granted to a person, who was declared as proclaimed offender in another case bearing FIR No.13, dated 24.05.2018, under Section 21/23(c), Sections 24, 25 and 29 of the NDPS Act, Section 14 of the

Foreigners Act, Section 3 of the Indian Passport Act, 1920 and Section 34/20 of the IPC, registered at Police Station State Special Operations Cell, Amritsar.

He has also contested for the rejection of the present petition on the strength of heavy recovery of contraband i.e., 17.828 kgs of heroin.

In rebuttal to the argument of learned State counsel, Mr. Hundal, learned counsel for the petitioner has admitted the fact that the petitioner was declared as a proclaimed offender in another FIR No.13 dated 24.05.2018, but the said order is under challenge before the Court of Additional Sessions Judge, Gurdaspur, vide criminal revision No.225 of 2022, which is pending consideration for 06.01.2023. He has also asserted that apart from the present FIR and FIR No.13, dated 24.05.2018, there is no other case pending against the petitioner. He has also made a valiant attempt to justify his conduct that the petitioner was declared as a proclaimed offender in the aforesaid FIR No.13, dated 24.05.2018, when he was living in Dubai and could not get any notice or information regarding the pendency of the trial and, therefore, his absence was neither deliberate nor intentional in the trial Court.

To record 'finding of innocence' for granting the relief of anticipatory bail to the petitioner, this court is not called upon to record a finding of not guilty and it is only required to see if there are reasonable grounds of its belief. It does not mandate the court to enter into a domain as if it is pronouncing a judgment of acquittal and recording a finding of not guilty. Such an exercise, if conducted by the court, is likely to defeat the prosecution case even before a trial is concluded.

The Court is also not expected to weigh the evidence for arriving at

a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of “*reasonable grounds*” for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act.

The Hon’ble Supreme Court elaborated the expression “*reasonable ground*” in '*Customs, New Delhi v Ahmadalieva Nodira*' 2004 (2) RCR (Criminal) 192 and '*State of Kerala v Rajesh*' 2020 (1) RCR (Criminal) 818, which can be read as under:

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief

contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

[emphasis added]

21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.”

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Further Section 37 of the NDPS Act, envisaged to twin conditions: The court’s satisfaction that there were reasonable grounds for believing that the accused was not guilty; and he was not likely to commit any offence while on bail.

The statute used “three expressions” — “the court is satisfied”; “reasonable grounds”, and “believing that the accused is not guilty”, and as such, it does not restrain the Court from exercising its jurisdiction. The requirement of recording reasons would not mean to record in writing establishing that an accused is innocent’. Hence it is the subjective satisfaction of the court based on an objective assessment of the material brought before it for giving a reasonable ground to sustain a belief.

In another case, the Apex Court in '*Narcotics Control Bureau Versus Mohit Aggarwal*', *Crl.A. No.1001-1002 of 2022*, decided on 19th July, 2022, held as under:

"10. The provisions of Section 37 of the NDPS Act read as follows:

37. Offences to be cognizable and non-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

A thorough discussion and the above referred case law crystalize the meaning of “reasonable grounds” used in Section 37(1)(b) of the NDPS Act as credible, plausible grounds for the Court to believe that the accused person is not guilty of the alleged offence. However, bail under the said section cannot be granted merely on the ground that nothing was found from the possession of the accused.

As strongly asserted by the learned State counsel there is sufficient and cogent evidence which is sufficient for this court to draw an inference that there are reasonable grounds to believe the petitioner’s active and regular involvement is drug peddling.

Apart from the above discussion, another question has arisen regarding the grant of anticipatory bail to a proclaimed offender. Reliance can be placed on the judgment of the Hon’ble Supreme Court in the case of '**Lavesh v State (NCT of Delhi)**' 2012(4) RCR (Criminal) 240, decided on 31.08.2012, which reads as under:

“10) From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and declared as “absconder”. Normally, when the accused is “absconding” and declared as a “proclaimed offender”, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of [Section 82](#) of the Code is not entitled the relief of anticipatory

bail.”

It can be safely relied upon the judgment of the Supreme Court in the case of '***State of Madhya Pradesh v Pradeep Sharma***' reported in 2014 (1) RCR (Crl) 269, wherein it has been held that an accused who is declared absconder/proclaimed offender and is not cooperating with the investigation should not be granted anticipatory bail.

Furthermore, the Punjab and Haryana High Court has also laid down in the case of '***Gurmukh Singh v State of Punjab (CRM-M-49631-2021)***', date of decision 26.11.2021, that it is a settled law that a person who has been declared as a proclaimed offender is not entitled to seek the relief of anticipatory bail.

This Court is also obvious of the prevailing circumstance, wherein drug abuse is a social malady. While drug addiction eats into the vitals of the society, drug trafficking not only eats into the vitals of the economy of a country, but to the economy of the State/country by generating illicit money.

The drug peddlers have successfully destroyed not only the social fabric of the society but finishing the youth, who are future generation of the country. Such accused need to be dealt with firmly and sternly with no sympathy to be shown to them particularly in the case in hand, wherein the petitioner is involved in smuggling of dangerous contraband at the international borders.

In the light of discussion made hereinabove and looking into the cogent material before this Court, I am of the considered view that since the recovery of contraband i.e., 17.828 kgs, is commercial in nature and the petitioner is involved in another case bearing FIR No.13, dated 24.05.2018,

under various Acts including the Foreigners Act and Passports Act, apart from NDPS Act, the conduct of the petitioner is suspicious in nature and the manner in which the contraband in the instant case has been got recovered with the specific averment of the prosecution that there is every chance of the petitioner having relations with the international smuggling gang across the border supported by the statement of Ajit Singh, during the course of investigation that his son Dharminder Singh and Harpreet Singh son of Bar Singh, resident of Dauke are also indulged in activity of INDO-PAK cross border smuggling or that they have managed one consignment from the Pakistani Smuggler in the area of Dera Baba Nanak 164 B BSF near barbered line of INDO-PAK border. Even otherwise since the petitioner is in India, as has been stated by the learned counsel for the petitioner from 05.11.2018, no attempt on his behalf is made till date to show his bona fide to join investigation and surrender before the Court in the present case as well as in another FIR, to prove his innocence.

The prayer for anticipatory bail is, therefore, declined.

Accordingly, the present petition is dismissed having no merits.

(SANDEEP MOUDGIL)
JUDGE

27.12.2022

Poonam Negi

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No