

CRM-M-2028 of 2023

2023:PHHC:065327

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-2028 of 2023

Date of decision: 05.05.2023

Boota Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ashok Giri, Advocate, for the petitioner.
Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.208 dated 17.10.2022 under Sections 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of the NDPS Act added later on), registered at Police Station Dakha, District Ludhiana.
2. Present FIR was registered on the basis of secret information that Balwinder Singh @ Budhu is habitual of selling poppy husk. If raid is conducted at his house, then he can be apprehended. Believing the information to be true, *ruqa* was sent. Raid was conducted. Accused Balwinder Singh @ Budhu was apprehended and 84 kg poppy husk was recovered from his possession. Present petitioner was nominated on the basis of disclosure statement of accused Balwinder Singh @ Budhu.

CRM-M-2028 of 2023

2023:PHHC:065327

3. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. He further submits that petitioner has been nominated as an accused on the basis of disclosure statement of co-accused, which is *per se* not admissible in evidence and no recovery has been effected from him. He further submits that petitioner is ready and willing to join the investigation.

4. Learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on the basis of allegations against the petitioner. His custodial interrogation is necessary. Petitioner is a habitual offender who remained involved in other NDPS cases.

5. I have heard learned counsel for the parties and perused the record.

6. On issuance of notice of motion, respondent-State has filed status report dated 31.01.2023 and paras 5 and 6 of the said status report read as under: -

“5. That then the I.O. tried to join independent witness from the locality but no body agreed to become witness. Thereafter the I.O. under the supervision deponent conducted search of the house of the accused Balwinder Singh @ Budhu. On search 3 bags of plastic (gattu) were recovered from one corner of room meant for chaff from the accused. These bags were checked. There was poppy husk in all the three bags. There was 18 Kgs poppy husk in each bag. So total 54 Kgs poppy husk in all the three bags was recovered. Parcels of the bags were prepared and no. A1, A2 & A3 was marked on the parcels. SI Jaswinder Singh sealed all the parcels with his seal bearing

CRM-M-2028 of 2023

2023:PHHC:065327

impression JS and by DSP with his seal bearing impression JS and taken into police possession.

ROLE OF THE PETITIONER

6. That the IO. interrogated accused Balwinder Singh at the spot. During interrogation the accused disclosed that Boota Singh s/o Jit Singh r/o Umrewal PS Mehatpur District Jalandhar has kept this poppy husk in his house. Statement u/s 27 Evidence Act of the accused was recorded. On this statement Boota Singh has been nominated as accused in this case and Offence u/s 29 NDPS Act has been added vide zimni no. 1 dated 17-10-2022.”

7. In ***State of Haryana vs Samarth Kumar, 2022 Live Law (SC) 622***, the Hon’ble Supreme Court held that the accused is not entitled for anticipatory bail only on the ground that no recovery was effected from the accused and he has been implicated on the basis of disclosure statement.

8. In ***Samrath Kumar's*** case (supra) the Hon’ble Supreme Court observed as under:-

“In cases of this nature, the respondent may be able to take advantage of the decision in Tofan Singh vs State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial. To grant anticipatory bail in case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”

9. In ***Bal Krishan Fauzdar v. State of Haryana 2018 (1) RCR Criminal 789***, it is held by a Co-ordinate Bench of this Court in para No. 8 as under: -

CRM-M-2028 of 2023

2023:PHHC:065327

“.....It is well settled that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.”

10. The law laid down in this judgment is fully applicable to the facts of the case in hand.

11. In view of the above, petitioner is not entitled to concession of anticipatory bail as his custodial interrogation is required.

12. Dismissed.

05.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No