

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

105

CRM-M-2082-2023
Date of decision : 16.01.2023

Sandeep Kumar @ Khanda

....Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Ms. Ramandeep Kaur, Advocate for
Mr. Varinder Basa, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.45 dated 09.05.2022 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 379 and 411 of the Indian Penal Code, 1860 (Section 29 of the NDPS Act was added lateron) at Police Station Fatehgarh Churian, District Batala, Gurdaspur.

Brief facts of the case are that on 09.05.2022 police party headed by SI Jatinder Singh were doing patrolling duty and conducting barricading at Canal Bridge, Badowal Kalan. They stopped 03 persons (Dalbir Singh, Prince Masih and Gursorabjit Singh) riding in one motorcycle. When they were asked to furnish documents of the motorcycle, they could not produce the same. On search 293 intoxicating tablets were recovered from the diggi of the motorcycle.

During investigation, the said motorcycle was also found to be stolen one. On interrogation, the above-said accused suffered disclosure statement and named the petitioner as one of their partner.

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused which has no relevance in eye of law. The petitioner was not apprehended on the spot. The petitioner has nothing to do with the co-accused. Except the disclosure statement made by co-accused, there is no evidence against the petitioner to link him with the alleged recovered contraband. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation. Therefore, the petitioner may be granted anticipatory bail.

Notice of motion.

On the asking of the Court, Mr. Jaspal Singh Guru, Asstt. A.G., Punjab, who is present in the Court, accepts notice on behalf of the respondent-State and submits that the co-accused in their disclosure statements disclosed that they used to commit theft and such like acts along with the petitioner. The petitioner is also involved in 02 other cases, one of that has been theft and another that of murder. Even during investigation, the petitioner got recovered 10 stolen motorcycles, 01 stolen Activa and 05 stolen mobile phones. For thorough investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature.

Moreover, The antecedents of the petitioner are also not good as he is already involved in 02 other cases. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1 SCC 240*** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case. For thorough investigation of the case, the custodial interrogation of the petitioner is necessary. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. The Hon'ble Supreme Court in ***State Vs. Anil Sharma : (1997) 7 SCC 187*** held as under:-

“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 ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

16.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No