

212-B

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

CRM-M-4133-2023 (O&M)
Date of Decision : 01.03.2023

SANDEEP KUMAR @ HAPPY

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vishal Nehra, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J.

Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure, is for grant of anticipatory bail to the petitioner in case FIR No.60 dated 24.11.2022, registered under Section 21(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Behrampur, District Gurdaspur.

Succinctly, the prosecution story is that on 24.11.2022, a police party from Police Station Behrampur, District Gurdaspur, led by Sub Inspector/Station House Officer, was present at the area of Police Station KajiChakk for checking the public when a secret information was received from informer that one car made i20 (colour white) bearing registration No.PB-18W-6161, in which, there are three persons, whose names are Rohit Kumar son of Harbhajan Lal resident of Shampur; Rajan Kumar @ Raja son of Hardeep Kumar resident of Khatib and Deepak Kumar son of

Parshotam Lal resident of Khatib (Police District Batala) are doing the work of selling *heroin*. It was further informed that this car was roaming towards the side of Village Kaire and if barricading is done on the side of Village Kaire and the cars are checked, then these three persons along with car and *heroin* in huge amount can be recovered from them. On finding the information reliable, the same was sent to the police station for registration of FIR. Accordingly, the above-said case FIR was lodged.

Upon issuance of notice of motion in this case, a short reply by way of an affidavit of Sh. Aditya Warier, IPS, Assistant Superintendent of Police, Dinanagar, District Gurdaspur, on behalf of respondent-State of Punjab, was filed.

A perusal of the status report would reveal that in pursuance to the secret information received, a *naka* was laid and the car in question, was intercepted and one Rohit Kumar was driving the vehicle, whereas, Deepak Kumar was sitting on the front seat of the car and Rajan Kumar was sitting on the rear seat and upon search, one kit was lying under the feet of Rajan Kumar and when checked, the same was containing *heroin*. On weighing, it came to be 274 grams *heroin*. It is stated in the status report that upon questioning, Rajan Kumar disclosed that he along with his brother-in-law Rohit Kumar and Deepak Kumar are into the business of selling *heroin* and they had purchased 400 grams of *heroin* from one Sandeep @ Happy (present petitioner) from Village Ganna, Police Station Philaur, District Jalandhar, for a sum of Rs.2100/- per gram and out of which, he sold 126 grams to daughter-in-law of his maternal uncle namely, Roji @ Dimpri at the price of Rs.2300/- per gram and rest of the *heroin* i.e. 274 grams along with Rs.500/-, they were to sell to other customers. It is

further mentioned in the status report that the following case property was recovered in this case :-

- i) *Car I-20 bearing No.PB-18-W-6161*
- ii) *Heroin - 274 gms.*
- iii) *Drug Money - Rs.5000/-*

It is stated in the status report that during investigation, the offence under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act was added vide diary No.16 dated 25.11.2022 and Section 27-A of the Narcotic Drugs and Psychotropic Substances Act was added vide G.D. No.18 dated 31.12.2022. It is further mentioned that the present petitioner (Sandeep Kumar @ Happy) and co-accused Roji @ Dimpiwere nominated as accused in this case vide G.D. No.27 dated 26.11.2022.

It appears that after being nominated in this case and apprehending arrest, the present petitioner filed an application for anticipatory bail before the learned Judge, Special Court, Gurdaspur. However, the same was dismissed vide order dated 20.01.2023 (Annexure P-2). Accordingly, the petitioner has filed the present petition before this Court, seeking anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case and his name is not mentioned in the FIR and no role has been attributed to him. It is further submitted that the alleged recovery of *heroin* has been effected from co-accused Rohit Kumar, Deepak Kumar and Rajan Kumar from their vehicle i-20 and nothing has been recovered from him and the petitioner is being sought to be nominated as an accused solely on the basis of disclosure statement made by co-accused Rajan Kumar. Learned counsel further submitted that the petitioner is having minor children. It is submitted that the

petitioner is ready and willing to join the investigation and co-operate therewith and as such, he may be granted anticipatory bail.

Per contra, learned State counsel has opposed the prayer of anticipatory bail of the petitioner by submitting that the recovery effected from the co-accused of the present petitioner is 274 grams of *heroin*, which falls under the category of commercial quantity. It is further mentioned that even the offence under Section 27-A of the Narcotic Drugs and Psychotropic Substances Act, has been added in the case FIR and accordingly, the bar under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, is attracted to this case. He has further submitted that the petitioner is a habitual offender and is involved in two other cases under the Narcotic Drugs and Psychotropic Substances Act. Learned State counsel has submitted that the custodial interrogation of the petitioner is required. Accordingly, the prayer for dismissal of the present petition has been made.

I have heard learned counsel for the parties and have gone through the paper book as well as status report filed on behalf of the respondent-State of Punjab.

As regards the submission that the petitioner is not named in the FIR and that he is sought to be nominated as an accused only on the basis of disclosure statement, which cannot be looked into; suffice it to say that FIR is not to be treated to be an encyclopaedia. In the nature of things, details had to be gathered by the investigation later. In this regard, reference can be made to the observations made by the Hon'ble Apex Court in ***Superintendent of Police, C.B.I. v. Tapan Kr. Singh, 2003(2) RCR (Criminal) 880***; wherein it was observed as under:

“20. It is well settled that a First Information Report is not an encyclopaedia, which must disclose all facts and

details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer

to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can...”

Further, it is erroneous to say that disclosure statement made by the co-accused during interrogation cannot be considered or looked into to connect the other co-accused. Such disclosure statement of co-accused can certainly be taken into consideration for providing lead in investigation and even during trial, it is admissible under Section 30 of the Indian Evidence Act.

Furthermore, the recovery of 274 grams of heroin falls in the category of “**commercial quantity**” and as per the status report filed in this case, offence under Section 27-A of Narcotic Drugs and Psychotropic Substances Act has also been added in the FIR vide G.D. No. 18 dated 31.12.2022. Thus, the rigors of Section 37 of NDPS Act are also attracted to this case. Section 37 of the NDPS Act reads as under:

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 3 [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.

There is neither any material on record nor anything has been pointed out by the counsel for the petitioner, which may enable this Court to record satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of such offence and that he is not likely to commit any offence while on bail.

Rather, as per Status Report, apart from the instant case, there are two more cases against the petitioner under the Narcotic Drugs and Psychotropic Substances Act, as per record of Police Station Behrampur. However in para 12 of the petition, the following averment has been made :-

“12. That petitioner has never been involved in any such case till today and he is falsely implicated in the present case, except FIR No.33 dated 24.01.2018, PS Phillaur, under Section 21/61/85 of NDPS Act, FIR No.133 dated 02.10.2017 under Section 22 of NDPS Act, FIR No.57 dated 26.03.2017 under Section 15/21/22/61/85 of NDPS Act, Police Station Phillaur, FIR No.97/2011, Section 324, 325, 326, Police Station

Phillaur, FIR No.28/2020, Section 29 of NDPS Act, Police Station Damtal, FIR No.85/2020, Section 29 of NDPS Act, Police Station Indora, FIR No.17/2020, Sections 323/324, Police Station Damtal and FIR No.21/2021, Section 29 NDPS Act, Police Station Damtal, in above noted cases, the petitioner is either on bail or acquitted by the Hon'ble Court."

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

The allegations in this case are quite grave and serious in nature. Furthermore, the custodial interrogation of the petitioner/accused is required for complete and effective investigation to find out the modus operandi of committing the crime and who all other persons are involved therein, etc. 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 uncalled for.

In *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful information.

Thus, finding no merit in the present petition, the same stands

dismissed accordingly.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

March 01, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No