

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(101)

CRM-M-4436-2023

Date of Decision: 30.01.2023

Bhagwan Singh

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. P.S. Sekhon, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C seeking the benefit of anticipatory bail to the petitioner in case FIR No.44 dated 15.6.2022 under sections 15 and 29 of NDPS Act, registered at Police Station, Khanauri, District Sangrur.

As per factual matrix, the police received a secret information that Kuldeep Singh son of Pargat Singh, Ranjit Singh @ Jeeta, Jagpreet Singh both sons of Bhagwan Singh, Bhagwan Singh (present petitioner) son of Banta Singh are habitual of selling poppy husk by using their vehicle make Mahindra XUV bearing registration no. HR-26BV-1040 and vehicle make Volkswagen Passat bearing registration no. UP-16AP-9427 by bringing poppy husk on cheap rates and selling the same on higher rates in the village of Punjab State. Their vehicle was parked at their residential house and the same was loaded with poppy husk. On receipt of the secret information, present FIR was registered and raid was conducted in the house of the accused, where vehicle bearing registration no. UP-16AP-9427 was found parked. On checking the said vehicle, 10 plastic bags were recovered from the diggy of the vehicle found to be containing poppy husk

and each of the said bags was containing 13 kg of poppy husk. Thereafter, on the basis of the disclosure statement of accused Jagpreet Singh, recovery of 14 plastic bags containing 13 kg poppy husk each were recovered from the vehicle bearing fake registration no. HR-26BV-1040 as its actual registration number was DL-12CA-2995. Thus, the total quantity of poppy husk weighing 312 kgs was recovered from the house of the petitioner.

Apprehending the arrest, petitioner approached the court of learned Special Court, Sangrur for grant of bail, however, after hearing the parties, the same was declined vide order dated 17.1.2023. Aggrieved by the same petitioner has approached this court for grant of bail.

Learned counsel for the petitioner vehemently contends that the petitioner has been falsely implicated in this case. It is submitted that the recovery if at all has been effected from the co-accused and no recovery has been effected from the conscious possession of the petitioner. He submits that though the recovery has been made on the basis of secret information, however, petitioner was not present in the house. It is submitted that both the vehicles from which the recovery has been effected are not even owned by the petitioner. It is further submitted that the secret information was not reduced into writing hence there is a violation of provisions of Section 42 of NDPS Act. He submits that no independent witness had been joined in the raid. It is submitted that co-accused Ranjit Singh, who is son of the petitioner has been granted the benefit of anticipatory bail. Counsel submits that in the facts and circumstances of the case petitioner deserves to be granted the benefit of anticipatory bail.

I have heard learned counsel for the petitioner at length and have gone through the records carefully.

Admittedly, a raid had been conducted by the police on the basis of the secret information. The raid was conducted in the house of the petitioner which is not in dispute. From the perusal of the record, it is apparent that after receiving the secret information the FIR in question was lodged and thereafter raid was conducted. The recovery of 312 kg poppy husk has been effected from the house of the petitioner and the same falls in the category of commercial quantity. The parity claimed by the petitioner with the co-accused Ranjit Singh would be of no help to him. It has been observed in the order passed while granting anticipatory bail to co-accused Ranjit Singh that he met with an accident on 14.6.2022 i.e. prior to registration of the FIR and had suffered two fractures, however, the petitioner before this court is the owner of the house from where 312 kg poppy husk has been recovered. The provisions of Section 37 of NDPS Act are straightway attracted for the consideration of the bail prayer for by the petitioner. The investigation is under progress.

Hon'ble the Supreme Court in ***State represented by CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has 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 suspected person is of tremendous advantage in disintering 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.”

The Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632*** has held as under:-

*“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in ***State v. Captain Jagjit****

Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

In the above said case, the Hon'ble Supreme Court has held that the Court is to draw a balance between the right of liberty of the individual and overall interest of the society. However, overall interest of the society would prevail upon the right of liberty of the individual.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour.

Resultantly, the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

30.01.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No