

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

**CRM-M-5242-2023**

**Date of Decision: 20.03.2023**

GURDAS SINGH ALIAS MANAK

...Petitioner

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. D.S. Virk, Advocate  
for the petitioner.

Mr. Amrik Narwal, D.A.G., Haryana.

**HARSH BUNGER, J. (ORAL)**

Petitioner has filed this petition under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in case FIR No.564 dated 30.12.2022, registered under Section 21(b) of the Narcotic Drugs and Psychotropic Act, 1985 (for short 'NDPS Act), at Police Station Ellenabad, District Sirsa.

Upon Issuance of notice of motion in this case, reply by way of an affidavit of Sh. Jai Bhagwan, HPS, Deputy Superintendent of Police, Sirsa, District Sirsa, on behalf of respondent-State of Haryana, has been filed, which is already on record.

Briefly, the above said case FIR was registered on the complaint of one ASI Anil Kumar, who stated that on 30.12.2022, he along with his fellow employees, having laptop and printer with them, was going from Budhimeri Chowk to Village Jeewan Nagar, in connection with patrolling in the government vehicle, and upon reaching near the over bridge of Ghaggar river, they saw a young boy coming on motorcycle

towards them, who upon seeing the police party ahead, tried to take u-turn; however, his motorcycle got switched off and he was apprehended. Upon enquiry, he told his name as Davinder Singh son of Richhpal Singh and on the basis of suspicion that he was having some intoxicant substance with him or in his motorcycle bearing No.HR-44L-8555, a notice under Section 50 of the NDPS Act, was served upon him, indicating that there was suspicion of some intoxicant substance with him and his search along with search of motorcycle was to be conducted and that he had a legal right to get the search conducted by calling any gazetted officer or a Magistrate at the spot or he could be produced before them along with motor-cycle.

After reading the notice and understanding the same, Davinder Singh exercised his right to get the search of himself as well as the motor-cycle be conducted in front of any gazetted officer whereupon, Sh.Ved Parkash, SDO, PWD (B&R) Ellenabad, was called at the spot. Sh. Ved Parkash, SDO, reached at the spot and introduced himself to Davinder Singh and after explaining the circumstances, the search of Davinder Singh as well as the motor-cycle was conducted, whereupon, one transparent polythene bag was found in the right pocket of blue coloured trouser worn by Davinder Singh and upon opening the same, *heroin* was found therein. Upon weighing the same, it came out to be *6.10 grams* along with the polythene bag. After preparing the sample and parcels, seizure memos were prepared, after complying with formalities. Said Davinder Singh further told that he had purchased the recovered *heroin* from one Manak (petitioner)son of Pehalwan resident of Village TalwaraJheel, District Hanumangarh (Rajasthan). Accordingly, the *ruqa* was sent to the police station and the case FIR was registered and Davinder Singh was taken into custody.

Apprehending arrest in this case, the petitioner applied for anticipatory bail; however, the same was dismissed vide order dated 17.01.2023 (Annexure P-2) passed by learned Sessions Judge/Special Court, Sirsa. Accordingly, the petitioner has filed the present petition under Section 438 Cr.P.C. seeking anticipatory bail.

Learned counsel for the petitioner submitted that the petitioner is innocent and has been falsely implicated in this case on the basis of an alleged disclosure statement of co-accused Davinder Singh, whereas, the petitioner has not committed any offence. It is submitted that the said disclosure statement is not admissible in evidence. Learned counsel further submitted that on 25.12.2022 at about 11:00 p.m., the petitioner was returning from Ellanabad, after celebrating Christmas party with his friends and on the way, he was stopped by the police officials and they demanded Rs.1,000/- from him and when he refused to fulfill their demand, some heated arguments were exchanged and they threatened that they will implicate the petitioner in some false case. It is submitted that only on account of said fact, the petitioner has been implicated in the present case, wherein *6.10 grams of heroin* was recovered from co-accused Davinder Singh, which falls under the category of non-commercial quantity and thus, the bar under Section 37 of the NDPS Act, is not attracted. He further submits that the petitioner is ready and willing to join investigation and also to comply with other conditions as may be imposed by this Court or the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on the ground that the petitioner is specifically named in the FIR as the co-accused Davinder Singh had

stated that the recovered contraband was supplied by the petitioner herein. It is further submitted that the petitioner is a habitual offender and is involved in four other cases, out of which, three cases are under the NDPS Act and one case is under the Rajasthan Excise Act. It is submitted that the custodial interrogation of the petitioner is required for unearthing the nexus of drug peddling which is ruining the youth of the country. Accordingly, learned State counsel has opposed the grant of anticipatory bail to the petitioner on the ground of seriousness and gravity of the offence.

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

In this case, the petitioner has been named in the FIR on the basis of statement of co-accused Davinder Singh. The petitioner is stated to be the supplier of the alleged contraband. As regards, the submission of the petitioner that the statement of the co-accused is not admissible in evidence, suffice it to say that as per Section 30 of the Evidence Act, when more than one persons are being tried jointly for the same offence and a confession made by one of such persons affecting himself and other of such person, is proved then the Court may take into consideration such confession as against such other person as well as against the person who make such confession. Even otherwise, such statement can certainly be looked into for providing lead in the investigation.

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 facts, which are to be taken into consideration to determine such entitlement of petitioner/accused to the

relief are quite distinct and different. Hon’ble the Apex Court in ***Shobhan Singh Khanka vs State of Jharkhand 2012(2) RCR (Criminal) 535***, had enumerated those factors, which are as under :-

- (i) *The nature and gravity of the accusation;*
- (ii) *The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- (iii) *The possibility of the applicant to flee from justice; and*
- (iv) *Whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.*

As per the status report, the petitioner has no clear antecedents as he is involved in four more cases, which are as under :-

| <i>Sr. No.</i> | <i>FIR No./Date</i> | <i>Under Sections</i>             | <i>Police Station</i>               |
|----------------|---------------------|-----------------------------------|-------------------------------------|
| 1              | 34/2020             | 8/21/29 of the NDPS Act           | TalwaraJheel, District Hanumangarh. |
| 2              | 188/2021            | 8/21 of the NDPS Act              | TalwaraJheel, District Hanumangarh. |
| 3              | 373/2021            | 8/21 of the NDPS Act              | Pilibanga, District Hanumangarh.    |
| 4              | 247/2010            | 16/54 of the Rajasthan Excise Act | TalwaraJheel, District Hanumangarh  |

In the instant case, there is nothing on record to enable this Court to record *prima facie* satisfaction for believing that petitioner is not involve in the offence or that he will not commit any offence while on bail especially when the petitioner is involved in three more cases under the NDPS Act and one case under the Rajasthan Excise Act.

In case of ***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.

Custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out as to from where he had procured the contraband and who all are involved in this crime. 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.

Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No.564 dated 30.12.2022, registered under Section 21(b) of the NDPS Act, at Police Station Ellenabad, District Sirsa; is dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

**March 20, 2023**  
gurpreet

**(HARSH BUNGER)**  
**JUDGE**

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