

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

CRM-M-7307-2023

Date of Decision: 27.03.2023

JHIRMAL SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

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

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.01 dated 02.01.2023, registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Act, 1985 (for short 'NDPS Act), at Police Station Nihal Singh Wala, District Moga.

2. Upon Issuance of notice in this case, status report by way of an affidavit of Sh. Manjeet Singh, PPS, Deputy Superintendent of Police, Nihal Singh Wala, District Moga, on behalf of respondent-State of Punjab, has been filed, which is already on record.

3. Succinctly, the above said case FIR was registered on the complaint of one Tarsem Singh, CIA Staff, Baghapurana, wherein it was stated that on 02.01.2023, police party headed by him, was present at Bus Stand Manuke Gill in connection with patrolling and checking of suspected person when a secret informer came and informed that one Balwinder Singh @ Jalandhar son of Piara Singh, is habitual to sell and

possess *poppy husk* and a case is already registered against him and on the said day, he was present on the banks of Canal going from Gholia Khurd to Village Ranian, and waiting for his customers and in case, a raid is conducted then he can be apprehended red handed.

4. Finding the said information to be reliable and credible, a *ruqa* was prepared and sent to the police station for registration of the FIR.

5. As per the status report, on receiving the information at CIA Staff, Baghapurana, another police party headed by ASI Shah Waryam, reached at the spot and found that on the right side of bank of Canal near bunch of trees, one motorcycle was parked upon which one white coloured plastic bag was loaded and a hair-cut person was standing and near him, two plastic bags were also lying on the ground. It is stated that on seeing the police party, said person became perplexed and tried to run away; however, he was apprehended with the help of police party and upon enquiry, he disclosed his name as Balwinder Singh @ Jalandhar. Thereafter, ASI Waryam Singh introduced himself to said Balwinder Singh and told him that he suspected that Balwinder Singh was having some intoxicant substance in the plastic bags lying in his custody and the search of Balwinder Singh as well as his motorcycle and bags, was to be conducted and he had a legal right to get the search conducted in the presence of a gazetted officer or any Magistrate. It is stated that Balwinder Singh, desired to get the search conducted in the presence of any gazetted officer.

6. Accordingly, the control room was informed to send some gazetted officer, whereupon Harinder Singh, Deputy Superintendent of Police (Inv.), Moga, reached at the spot and introduced himself to Balwinder Singh, who also told said Balwinder Singh that he had doubt that

there was some intoxicant substance in the plastic bags and his search along with search of motorcycle and bags was to be conducted and he has a legal right to get the said search conducted in the presence of any other gazetted officer or any Magistrate, whereupon Balwinder Singh reposed faith in the said Deputy Superintendent of Police. Thereafter, the consent memo was prepared and as per the directions of Harinder Singh, Deputy Superintendent of Police, Moga, the search of the plastic bags was conducted from where *poppy husk* was found and upon weighting, it came out to be 20 kgs. from each bag. All these bags were numbered from 1 to 3 and after sealing the same, necessary formalities were carried out.

7. As per the status report, during investigation, the above said Balwinder Singh, got his disclosure statement recorded on 05.01.2023, wherein, he disclosed that he had taken said *poppy husk* from Jhirmal Singh @ Channu (petitioner) son of Swaran Singh. He further disclosed that both of them were in-touch with each other through WhatsApp calling from Mobile No.97813-40851 of Balwinder Singh and 95018-31591 of petitioner. Accordingly, the petitioner was nominated as accused in this case and offence under Section 29 of the NDPS Act, was added.

8. Apprehending his arrest in this case, the petitioner applied for anticipatory bail before the Court of Judge, Special Court, Moga; however, the same was dismissed vide order dated 04.02.2023 (Annexure P-4). Accordingly, the petitioner has filed the present petition under Section 438 Cr.P.C. seeking anticipatory bail.

9. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case on the basis of disclosure statement made by main accused namely, Balwinder Singh @ Jalandhar. It is submitted that the said disclosure statement is not

admissible in evidence and even otherwise, once the recovery has already been effected from the main accused-Balwinder Singh, the custodial interrogation of the petitioner is not required. It is further submitted that the petitioner is not facing any other case under the NDPS Act and he has been implicated by the police at the instance of one Puran Singh @ Punna, who is stated to be a police tout and he nurtures a grudge against the petitioner as the mother of the petitioner had submitted applications against said Puran Singh @ Punna. It is also submitted 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.

10. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. It is submitted that the recovered contraband falls under the category of commercial quantity and accordingly, the provisions of Section 37 of the NDPS Act are attracted. Learned State counsel has further submitted that the petitioner has concealed the factum of his involvement in three other cases, which includes one case under the NDPS Act. Learned State counsel has referred to para No.12 of the status report, which reads as under :-

12. That petitioner is habitual offender and apart from present case, three other cases detailed below already stands registered against the petitioner:

<i>Sr.No.</i>	<i>FIR No./Date</i>	<i>Police Station</i>	<i>Section</i>
<i>1.</i>	<i>142/23.07.2021</i>	<i>Dharamkot</i>	<i>307/323/148/149 IPC</i>
<i>2</i>	<i>16/04.03.2014</i>	<i>FatehgarhPanjtoor</i>	<i>336/148/149 IPC and 25 Arms Act</i>
<i>3</i>	<i>73/29.04.2015</i>	<i>Canal Colony Bathinda</i>	<i>15 NDPS Act</i>

11. Learned State counsel submits that the petitioner is a habitual offender and hence, his custodial interrogation is required so as to find out as to who all are involved in this crime and from where, the *poppy husk* was being collected.

12. 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 State of Punjab.

13. In this case, the petitioner has been nominated on the basis of disclosure statement made by main accused namely, Balwinder Singh @ Jalandhar. 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 the 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.

14. Further, the petitioner has been nominated under Section 29 of the NDPS Act during interrogation of co-accused Balwinder Singh vide DDR No.26 dated 05.01.2023, from whom the recovery of 60 kgs. of *poppy husk* was effected, which falls under the category of 'commercial quantity' and in this regard, rigors of Section 37 of the NDPS Act would be attracted. Section 37 of the NDPS Act reads as under:

*S.37 “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 sub-section (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.”

15. A perusal of the abovesaid provision contained under Section 37 clearly provides that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application for such release and 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 such offence while on bail.

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

17. 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.

18. 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.

19. 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.

20. 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.01 dated 02.01.2023, registered under Sections 15 and 29 of the NDPS Act, 1985, at Police Station Nihal Singh Wala, District Moga; is dismissed.

21. 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 27, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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