

217

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

CRM-M-13890-2023
Date of decision : 07.11.2023

RAJINDER KUMAR

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

On 07.08.2023, the following order was passed :-

“Apprehending his arrest in F.I.R. No.166 dated 09.07.2022 registered for the offences punishable under Sections 15, 21, 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Muktsar, District Sri Muktsar Sahib, the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. Counsel for the petitioner refers to order dated 22nd of December, 2022 passed in CRM-M No.43001 of 2022 to submits that petitioner prayed for permission to withdraw the said petition with liberty to file a fresh one with better particulars as the matter was being confused regarding the antecedents of the petitioner as the prosecution claimed that that the petitioner is facing another case. He submits that the aforesaid position now stands clarified by the prosecution in the short reply dated 16th of July, 2023 filed by way of an affidavit of Rajesh Snehi Batta,

PPS, Deputy Superintendent of Police (Detective), Sri Muktsar Sahib, wherein Para No.14 reads as under :-

“14. That the previous antecedents of the petitioner has been verified by SHO City SMS SI Varun Kumar and it is found during his inquiry that case FIR no.706 dated 27.09.2009, under section 15 of NDPS Act was registered at Police Station Kotwali Bathinda against Rajinder Kumar son of Jagan Nath son of Hans Raj, resident of Sri Muktsar Sahib not against the present petitioner but according to record Fir No. FIR No.56 Dated 8.10.2018 Under Sections 498 A/494 IPC, Police Station (Woman) Bathinda, FIR No.38 Dated 22.2.2022 Under Sections 379/411 IPC, PS City Sri Muktsar Sahib were registered against the present petitioner It is apt to mention here that the name of the accused, father's name of the accused are the same and the names of the grandfather's are different, due to the said reason there was misconception and it was wrongly averred that the said case was registered against present petitioner inadvertently but it was only happened due to the said misconception.”

3. Counsel contends that the perusal thereof would reveal that the same was owing to some misconception as the person having similar name as that of the petitioner and the same father's name was facing FIR No.706, dated 27th of September, 2009, registered for offence punishable under Section 15 of the NDPS Act, at Police Station Kotwali Bathinda. However, now it has been discovered that that person was different as the grandfather's name has been found to be different.

4. While pressing on for the grant of pre-arrest bail in the present case, Mr. Ghai submits that it is only in the secret information that the name of the petitioner was mentioned. Apart therefrom nothing has been recovered from the petitioner nor he has been nominated by any other accused who were apprehended from the spot and huge recovery was made.

5. Counsel for the State does not dispute the said assertion. However, he submits that the son of the petitioner was apprehended and from whom 810 intoxicating tablets were recovered which is a commercial quantity.

6. Having heard counsel for the parties, this Court finds that apart from the name of the petitioner having been mentioned in the secret information, nothing cogent has come on record that drives home guilt of the petitioner. Merely mentioning of name in the secret information at this stage does not *prima facie* make offence against the petitioner.

7. Adjourned to 07.11.2023.

8. In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal and surety bonds to the satisfaction of the Arresting Officer/Investigating Officer. As and when called, the petitioner shall join the investigation. He shall abide by the conditions enumerated under Section 438(2) of the Cr.P.C. Apart from the conditions envisaged under Section 438(2) of the Cr.P.C., the petitioner shall also remain bound by the following conditions :

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the course of investigation/ trial.
- (iii) The petitioner shall not absent himself on any date before the investigating officer/trial.
- (iv) The petitioner shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioner shall deposit his passport, if any with the Trial Court/Investigating Officer.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the Trial Court/ Investigating Authorities.
- (vii) The petitioner shall not in any manner try to delay the Investigation/trial.

In case of breach of any of the aforesaid conditions and those which may be imposed by the Investigating Authorities/

Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.”

2. Today, Ld. State Counsel on instructions from ASI Balwant Singh submits that the petitioner has already joined investigation and is no more required for custodial interrogation.

3. Without commenting on the merits of the case and in view of the aforesaid fact, order dated 07.08.2023 is made absolute, subject to the conditions as enumerated under Sections 438(2) Cr.P.C.

4. This order should not be treated as "blanket" order. It will not be read granting the petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

5. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency to investigate into the charges against the petitioner.

6. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.

7. It will be open to the police or the investigating agency to move this Court for a direction under Section 439(2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to

witnesses with a view to influence outcome of the investigation or trial.

8. Petition stands disposed off accordingly.

November 07, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No