

CRM-M-14157-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14157-2023 (O & M)
Date of decision: 12.04.2023

Nachhattar Kaur

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Shakti Mehta, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.0180 dated 19.08.2022 under Section 15 of the NDPS Act and Section 61-1-14 of the Excise Act, 1914 registered at Police Station Samana, District Patiala.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Guddo Kaur wife of late Kala Singh was habitual of selling poppy husk as well as illicit liquor by bringing it from other states. On 19.08.2022 also, she was selling poppy husk and illicit liquor by walking in the street outside her house. If a raid was conducted, a heavy quantity of poppy husk and illicit liquor could be recovered from her possession.

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Based on the abovesaid information, an FIR No. 0180 dated 19.08.2022 under Section 15 of the NDPS Act and Section 61-1-14 of the Excise Act, 1914 at Police Station Samana, District Patiala, came to be registered against the said Guddo Kaur.

3. Thereafter, a raid was conducted at the house of Guddo Kaur. When the accused-Guddo Kaur saw the police party, she became perplexed and ran away after throwing a heavy transparent polythene, held in her hand, in the street. On inspection, the polythene packet was found to contain 1 kilo 500 grams of poppy husk. The search of the house of the Guddo Kaur yielded a plastic drum containing illicit liquor. On measuring, it came to be approximately 93 bottles of illicit liquor.

4. The learned counsel for the petitioner contends that the petitioner has no role to play in the alleged incident. In fact, her name was Nachhattar Kaur wife of late Resham Singh and not Guddo Kaur wife of late Kala Singh as has been mentioned in the FIR. An attempt was being made to falsely implicate the petitioner in the present case. Since the recovery already stood effected and there was a doubt regarding the identity of the accused, she was entitled to the grant of concession of anticipatory bail, moreso, as she was a lady.

5. The learned counsel for the State, on the other hand, has filed a reply dated 12.04.2023 by way of affidavit of Saurav Jindal, PPS, Superintendent of Police, Sub Division Samana, District Samana. While referring to the aforesaid reply, he contends that during the course of investigation, the statement of Baldev Singh Nambardar son of Pritam Singh

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permanent resident of their village Marauri whose husband Resham Singh @ Kala had expired about 09 years ago. Nachhattar Kaur was also known by her nick name Guddo and her husband was called Kala in the village. A similar statement was recorded of one Isma Ram, a former Sarpanch of the said village. He, thus, contends that there is absolutely no doubt about the fact that the petitioner-Nachhattar Kaur is also known as Guddo Kaur wife of Resham Singh @ Kala. Since the recovery of illicit liquor has been effected from the house of the petitioner and she was seen throwing a plastic bag containing poppy husk, she was not entitled to the grant of anticipatory bail.

6. I have heard the learned counsel for the parties at length.

7. The primary ground taken is that the petitioner was in fact, Nachhattar Kaur wife of late Sh. Resham Singh and not Guddo Kaur has has been stated in the FIR. The said argument has been clearly negated during the course of investigation as the statements of Baldev Singh Nambardar and Ex-Sarpanch Isma Ram of village Marauri have been recorded to the effect that Nachhattar Kaur was also named as Guddo Kaur in the village and her husband late Resham Singh was also known as Kala.

8. Additionally, the Hon'ble Supreme Court in the case of ***'Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977'*** has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the prima facie case against the accused. The relevant extract of

the judgment is reproduced hereinbelow:-

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“It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

*We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application***

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should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. In view of the aforementioned discussion and the serious nature of the allegations levelled against the petitioner, no case for the grant of anticipatory bail is made out. The present petition is, therefore, dismissed.

(JASJIT SINGH BEDI)
JUDGE

April 12, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No