

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2023:PHHC:046429

(102)

CRM-M-15902-2023

Date of Decision: 29.03.2023

Saurav Khajuria @ Saurav Mahajan

--Petitioner

Versus

State of Punjab

--Respondent

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

Present:- Mr. R.K. Arya, Advocate for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

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.0023 dated 3.3.2023 under sections 18, 61, 85 of NDPS Act (later on added offence under section 29 of NDPS Act), registered at Police Station, Sadar Gurdaspur, District Gurdaspur.

As per factual matrix, on 3.3.2023 when the police party was checking the vehicles, then on the basis of suspicion car bearing registration no.PB-02-EG-6783 was stopped. On seeing the police party the occupants of the car tried to escape, however, they were prevented from escaping. The car was being driven by a clean shaven young man and the second person wearing a turban was sitting on the side seat. The car was searched and from the dashboard a black colored envelope was recovered. The driver of the car disclosed his name as Twinklejit Singh and the person sitting by his side disclosed his name as Joginder Singh. Police party tried to join the public witness, however, nobody was ready for the same. On checking the plastic envelope six packets of opium were recovered which on

weighing were found to be 300 grams. As the occupants of the car failed to show any license for the possession of the opium, FIR in question was registered and a special report was sent and the investigation commenced.

During investigation accused Twinklejit Singh disclosed that six packets of opium which were recovered were purchased by them from one Manpreet Singh @ Rs.9,000/- per packet and out of the same four packets were to be sold to Saurav Khajuria @ Saurav Mahajan i.e. the present petitioner for Rs.10,000/- and the rest of the two packets were to be kept by them. Resultantly the petitioner was also arrayed as accused.

Apprehending the arrest, petitioner approached the court of learned Judge, Special Court, Gurdaspur for grant of bail, however, after hearing the parties, the same was declined vide order dated 17.3.2023. 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 neither the petitioner has been named in the FIR nor any recovery has been effected from him. He submits that name of the petitioner has been arrayed as an accused in the present case only on the basis of disclosure statement of the co-accused. It is submitted that the disclosure statement made by the co-accused is not an admissible evidence. It is further submitted that the recovery made from the co-accused is of 300 grams of opium which falls in the category of non-commercial quantity and thus provisions under Section 37 of NDPS Act are not attracted. It is further submitted that as there is no evidence against the petitioner, he deserves to be granted the benefit of bail.

On the other hand, learned State counsel has vehemently opposed the submissions made by counsel for petitioner. He submits that

though the recovered quantity falls under the non-commercial quantity, however, there is specific disclosure statement made by co-accused about the complicity of the petitioner. He submits that petitioner is a habitual offender and is involved in other cases of the similar nature. He states that petitioner is convicted in case FIR No.108 dated 25.6.2016 registered under sections 295-A, 153-A, 124-A, 419, 109, 120-B IPC at Police Station, City Malerkotla vide order dated 16.3.2021. It is further submitted that petitioner is facing trial in another case i.e. FIR No.29 dated 12.9.2019 registered under Sections 61, 1, 14 of Punjab Excise Act at Police Station, Narot Jaimel Singh.

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

From the allegations made in the FIR, it is apparent that name of the petitioner was disclosed by the co-accused during investigation, wherein it was disclosed by co-accused Twinklejit Singh that out of the six packets of opium, four packets were to be sold to the petitioner. Besides this, as per information provided by learned State counsel petitioner is involved in other cases as well.

Hon'ble Supreme Court in *The State of Haryana vs. Samarth Kumar, 2022 Livelaw (SC) 622* has held that in the cases like the present one, the accused may take advantage of facts like no recovery was effected from him and that he was implicated on the basis of disclosure statement made by the main accused, at the time of arguing regular bail application or at the time of final hearing after conclusion of trial.

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 his 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

29.03.2023

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No