

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

CRM-M-18487-2023

Date of decision : 13.07.2023

Paramjeet Singh @ Pammi

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Laghuinder S. Sekhon, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Apprehending his arrest in FIR No.33, dated 24.02.2023, registered for offences punishable under Sections 22, 27 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Bhikhi, District Mansa, the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. Status report by way of affidavit of Sanjeev Goyal, PPS, Deputy Superintendent of Police, Sub-Division Mansa, District Mansa has been filed on behalf of the respondent-State today in Court. The same is taken on record.

3. As per the allegations leveled in the FIR it has been alleged as under :-

“Contents : “ SHO P.S. Bhikhi, Sir today I ASI along with
HC Gurpreet Singh 100/Mansa, SC Surender Kumar 1270/Mansa,
PHG Harbans Singh 10774 in private vehicle being driven by

myself was on patrol duty in the jurisdiction of the police station in relation to checking of suspicions persons and vehicle. When the police party reached near the bridge of drain situated on the Dhalewan Road Bhikhi then from the right side of the sidelane of the drain from the unmetalled road one young cropped hair person seen coming on motorcycle make Splendor of black color bearing registration no. PB-13-AS-2531. The said person was carrying plastic polythene of orange color in his right hand. On the basis of suspicion I ASI got halted the police vehicle and with the help of fellow policemen signaled the said young person to stop but the said person on seeing the police party tried to turn his motorcycle make Splendor of black color bearing registration no. PB-13-AS-2531. Then I ASI with the help of fellow policemen apprehended the said person and asked about his name and address on which he told his name as Gora son of Pali Singh son of Sarwan Singh resident of Stadium Road near Grain Market Sunam. His particulars are like this age: aprx. 22 years, height: 5'9", Complexion: Wheatish, Hair and Beard: trimmed, Scar of the right side of the forehead, Built: Slim and Agile. I ASI told the said person that I have suspicion that there are intoxicant tablets in the plastic polythene of orange color held by you in your right hand, so I want to search the same. Efforts were made to join some private witness into the police party but found none. Then I ASI told the said Gora that my name is ASI Nachhattar Singh, 398/Mansa posted as Investing Officer at Police Station Bhikhi, I am in my complete uniform as per my rank along with name plate. I want to search the plastic polythene of orange color held by you in your hand but you have legal right to get your search and the search of the plastic polythene of orange color held by you in your hand, be conducted from some gazetted officer or some Magistrate or you can be taken before them along with the polythene of orange color. On which a separate notice under Section 50 of NDPS Act was issued. The same was signed by aforesaid Gora. Thereafter said aforesaid Gora gave his consent and replied that I want to get the search of the plastic polythene of orange color which is in my

possession, be conducted from your goodself at the spot. I have complete faith in you. On which the memo regarding information of rank, information regarding right and consent was got prepared and the same was signed by aforesaid Gora and by witnesses. Thereafter the plastic polythene of Orange color which was held by aforesaid Gora in his right hand was checked and found 50 strips of tablets make Tramadol Hydrochloride tablets USP USP 100 mg Expiry Date bearing B.No. PY23AB09 MFG Date 01/2023 12/2024 each strip is containing 10/10 tablets so total 500 tablets were recovered. The said 50 strips were put back into the same plastic polythene and thereafter the same were put into a cloth bag and converted into parcel. The parcel was sealed with my seal bearing impression "NS". Sample seal was prepared separately. The seal after use was handed over to HC Gurpreet Singh 1000/Mansa. Then I ASI checked the motorcycle make Splendor of black color bearing document registration no. PB-13-AS-2531 but regarding its ownership was no found. Thereafter the duly sealed parcel of intoxicant tablets along with sample seals and motorcycle make Splendor of black color bearing registration no. PB-13-AS-2531 were taken into police possession vide separate recovery memo. The memo was signed by witnesses. On asking about any permit or license for keeping in possession intoxicant tablets the aforesaid Gora could not produce the same. He has committed offence under Section 22/61/85 by keeping in his possession 500 intoxicant tablets without any permit or license. So sending the ruqa to police station by hand PHG Harbans Singh 10770 for registration of case under said offence. Kindly inform about FIR number after registering the case, issue special reports and inform PCR Mansa.xxx”

4. Counsel for the petitioner submits that the petitioner has been nominated on the basis of disclosure made by Gora and no recovery has been effected from him and thus in view of law laid down by the Apex Court in the case of **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1**

the disclosure alone cannot be the basis of the conviction of the petitioner and therefore there are oblique chances that the trial would result in conviction apart from that the quantity involved is non-commercial and thus the contours of Section 37 of the NDPS Act also will not be attracted.

5. Per contra, State Counsel has resisted the prayer made by the petitioner claiming that the petitioner is a habitual offender who is facing six cases registered for offences punishable under the provisions of NDPS Act and thus he will not be entitled for grant of pre-arrest bail.

6. I have heard counsel for the parties and have gone through records of the case.

7. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia vs. State of Punjab, 1980 (2) SCC 565**, Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail....”

(emphasis supplied)

8. Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that :-

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it.”

9. As per settled law **(in C.B.I vs. Anil Sharma, 1997(7) SCC 187)** there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be belayed.

10. Keeping in view the allegations levelled against the petitioner and the fact that he is facing six more FIRs that too under the NDPS Act this Court does not find it to be fit case to grant discretionary relief as enumerated under Section 438 Cr.P.C.

11. Resultantly, the present petition is dismissed.

July 13, 2023
Dpr

(Pankaj Jain)
Judge

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