

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

CRM-M-21655-2023 (O&M)
Date of Decision: 02.06.2023

SUKHDEV SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sukhdeep Singh Bhinder, Advocate
for the petitioner.

Mr. H.S. Sidhu, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.31 dated 11.03.2023, registered under Sections 15C and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS" Act), at Police Station Phul, District Bathinda.

2. Upon issuance of notice in this case, the status report by way of affidavit dated 01.06.2023 of Sh. Aaswant Singh, PPS, Deputy Superintendent of Police, Sub-Division Phul, Bathinda, on behalf of respondent-State of Punjab, has been filed in the Court today, which is taken on record, subject to all just exceptions.

3. Briefly, as per prosecution story, on dated 11.03.2023, Sub Inspector Kuldip Singh, Police Station Phul was present in Police Station when an information was received from Jaswinder Singh that on Chotian Road Phul, one canter bearing No. PB-03-AX-0793 was stopped,

whose driver is Soma Singh son of Gurmail Singh and some intoxicating substances seems to be loaded therein and he asked for sending some officer at the spot whereupon Sub Inspector Kuldip Singh alongwith police party reached at the spot and after following procedure, enquired about the details of the person stopped, who revealed his identity as Soma Singh. Thereafter, Soma Singh was made aware of his legal rights and he desired to get the search conducted in the presence of a gazetted officer. Thereafter, Sh. Aswant Singh, Deputy Superintendent of Police, Division Phul was called at the spot and upon his reaching at the spot, he introduced himself to Soma Singh and made him aware of his rights and after following procedure, search was carried out and eight jute bags were found in the canter and poppy husk was recovered, which upon weighing came to be 20 kgs. (each bag), total 160 kgs. Upon further search of canter, bills were recovered according to which the contents in the canter were Dry Red Chillis 147 bags Teja, Dry Chillis 12 bags 314R, Red Chilli Powder 90 bags, driving licence number PB00320190010400, Permit No. PB/3/NP/HGV/2019/68 on the name of Sukhpal Singh son of Modan Singh were recovered, which were taken into possession vide recovery memo. Soma Singh failed to produce any permit or licence at the spot. Accordingly the above-said FIR was registered.

4. Apprehending his arrest in this case, the petitioner approached the Court of Judge, Special Court, Bathinda seeking grant of pre-arrest bail by filing an application; however, the same was declined by the learned Judge, Special Court, Bathinda, vide order dated 18.04.2023. Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail.

5. Learned counsel for the petitioner has contended that the

petitioner has been falsely implicated in the present case and he was not named in the FIR. It is submitted that the petitioner has been nominated as an accused for the only reason that he is the owner of the canter in which the alleged contraband was recovered. It is contended that the alleged contraband in this case has been planted and is highly improbable. Learned counsel for the petitioner submits that the petitioner is ready to join the investigation and to comply with other conditions as may be imposed by this Court or by the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

6. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. Learned State counsel referred to para Nos.5 to 7 of Status Report, which reads as under :-

“5. The present petitioner Sukhdev Singh had the key role in the entire incident as the petitioner along with co-accused Soma Singh went to Madhya Pradesh on the swift car Model 13. There at Madhya Pradesh the petitioner and co-accused called one Gurpreet Singh at a Dabha. Gurpreet Singh went in the Madhya Pradesh to purchase the red chillies. At the Dabha in Madhya Pradesh one Subash Kumar @ Bhasi s/o Kewal Krishan who is residence of Village Ballianwali loaded the eight bags of the poppy husk of weighing 20 kg each (total 160 kg) in a canter number PB 03 AX 0793.

6. That the petitioner handed over the amount of Rs.2 lakhs to the person who gave the poppy husk to the petitioner in Madhya Pradesh.

7. That from the version of the FIR, it is crystal clear that the commercial quantity of the poppy husk is recovered from co-accused Soma Singh. The present petitioner Sukhdev Singh, co-accused Subash

Kumar @ Bhasi s/o Kewal Krishan residence of Village Ballianwali are involved in the smuggling of the poppy husk from Madhya Pradesh to Bathinda.”

It is submitted that the recovery of 160 kgs.poppy husk falls under the category of “commercial quantity”, thus the bar under Section 37 of the NDPS Act is attracted. It is submitted that the petitioner is involved in other case i.e. FIR No.23 dated 15.02.2020 under Sections 195 and 424 of the Indian Penal Code, at Police Station City Rampura, District Bathinda and his custodial interrogation is required for unearthing the nexus of drug peddling and from where the such huge quantity of contraband was procured and who all are involved in the crime. Accordingly, prayer for dismissal of the petition has been made.

7. 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.

8. In this case, huge contraband (160 kgs. poppy husk) was recovered, which falls under category of “commercial quantity” and thus the 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 [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.”

A perusal of the abovesaid provision contained under Section 37 of the Act clearly provides that no person accused of an offence 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.

9. 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 he is involved in another case FIR No.23 dated 15.02.2020.

10. 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.

11. 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 informations.

12. Custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out as to from where such huge quantity of recovered contraband was procured 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.

13. 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.31 dated 11.03.2023, registered under Sections 15C and 25 of the NDPS Act, at Police Station Phul, District Bathinda; is dismissed.

14. 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.

15. All pending application/s, if any, shall also stand closed.

June 2nd, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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