

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

101

CRM-M-26318-2023 (O&M)

Date of decision: 01.09.2023

Tirath Nath

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S.S. Gill, Advocate for the petitioner

Ms. Himani Arora, AAG Punjab

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR no.27 dated 12.02.2022, registered under Sections 18 and 29 of NDPS Act, 1985 at Police Station Makhu, District Ferozepur.

2. Briefly put, the facts of the case are that on 12.02.2022, at 1.30 am, during patrolling duty by the police party, headed by SI Narpinderpal Singh, when they reached at Kussu Wala turn, one person wearing turban was seen coming with a back-bag hanging on his back. On seeing the police party he got perplexed and started running towards the abandoned area on his left side. On being apprehended, he disclosed his name as Gurjeet Singh and upon his search having been conducted as per provisions of the Act, 6 kg of opium was recovered from his back-bag. During investigation, on 14.02.2022, he disclosed that he had bought 11 kg opium from one Ali @Feroze Ali, resident of Guwahati (Assam) and his

brother-petitioner had been helping him in purchasing the same and had sold 1 kg, out of the total, to various persons and the remaining 4 kg was got recovered by him pursuant to his disclosure statement. On the basis of this disclosure statement, the bank accounts of the petitioner and other evidence were procured.

3. Learned counsel contends that the petitioner has been falsely implicated in the case. His name surfaced based on disclosure statement of co-accused-Gurjeet Singh, who is his brother, who has also been falsely implicated, regarding which he had filed petitions before this Court. He is not involved in any other case. Only allegation against the petitioner in the report of SIT is that he was in touch with co-accused Feroze Ali, which is not sufficient to connect to the alleged recovery, effected from his brother. Since, he was pursuing the case of his brother, thus he has been involved. He places reliance on the judgment in the case of **Tofan Singh vs. State of Tamil Nadu**, (2021) 4 SCC 1. The petitioner is ready and willing to join the investigation and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to him.

4. Learned State counsel opposes the prayer on the ground that commercial quantity of contraband was recovered from the co-accused, who is none other than the brother of the petitioner. In pursuance of his disclosure statement, 4 kg opium was recovered from their residential house, which the petitioner has not disputed, that he does not live there. While referring to para 4 of the order dated 09.05.2023, passed by Judge, Special Court, whereby the anticipatory bail application of the petitioner was dismissed, submits that during the period from January, 2022 to 10.02.2022, co-accused Gurjeet Singh had talked to co-accused Feroze Ali for about 35 times and after his arrest, the petitioner got

the same number activated vide a new SIM and had also talked to said Feroze Ali s/o Rokshed Ali, resident of Udiyana Rangia, Guwahati (Assam) on 18.2.2022, 11.05.2022 and 14.05.2022. He further submits by referring to the status report dated 01.08.2023 filed by way of affidavit of Palwinder Singh, Deputy Superintendent of Police, that the allegations levelled by the petitioner to the effect that his brother was illegally retained by the police in civil dress on 11.02.2022 at Railway Station Jalandhar Cantt. were enquired into by examining the CCTV footage of said railway station and found to be false by the Special Investigation Team, constituted on the order of Senior Superintendent of Police, Ferozepur, headed by Superintendent of Police (Investigation), Ferozepur, Deputy Superintendent of Police (D) and Deputy Superintendent of Police (NDPS), Ferozepur. The co-accused has specifically stated that the petitioner helped him in purchasing the opium. Custodial interrogation of the petitioner is therefore required in the instant case to find the source of origin, the entire chain of supply of contraband and the other drug peddlers involved. There is every possibility of the petitioner fleeing from justice and tampering with the evidence, as the petitioner has been declared proclaimed offender vide order dated 15.07.2023. The inadvertent mentioning of two cases in para 11 of the report, was regretted. Thus, it is prayed that the present petition be dismissed.

5. Heard.

6. Hon'ble The Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, has observed that, "Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an

extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

7. It is apposite to refer to the relevant paras of the status report, which read thus:

“8. That during investigation conducted by Special Investigating Team (SIT) it is found that Gurjit Singh was using the mobile number 98140-09015 and through said mobile number he was regular in touch with Ali @ Feroze Ali resident of Guwahati (Assam). After arrest of Gurjit Singh, petitioner who is real brother of main accused Gurjit Singh got issued another sim of same number 98140-09015 on 01.06.2021 by submitting his documents before the mobile company and after that he remained in touch with said Feroze Ali from 18.02.2022 to 14.05.2022. During investigation of the case it was also found that on 15.02.2022 accused Gurjit Singh disclosed that he used to brought opium by taking money from his brother Tirath Nath. During investigation of the case, it was also found that allegations levelled by the petitioner that his brother Gurjit Singh was illegally retained by the police in Civil Dress on 11.02.2022 at Railway Station Jalandhar cantt wherefrom the police had taken him forcibly in car bearing No. PN88-4355 were also found to be false and during investigation the SIT has examined the CCTV footage of said Railway station deeply. After completion of investigation SIT petitioner has also been nominated as accused under section 29

of NDPS Act.

9. That after completion of investigation qua Gurjit Singh @ Jeeta challan against him was presented before the Ld. Court on 05.08.2022 and now same is fixed for 03.08.2023.

10. That the police tried its level best to arrest the petitioner, but petitioner succeeded to conceal himself at some secret place, due to which proclamation proceeding were initiated against them and vide order dated 15.07.2023 passed by the Ld. Court of Illaqa Magistrate, Zira.”

8. In the case in hand, the petitioner has been named by none other than his own brother alongwith co-accused Feroze Ali, stating therein that he used to purchase opium, by taking money from the petitioner and recovery effected from whom was of 6 kg of opium, when he was apprehended at the spot, whereafter during investigation, he, pursuant to a disclosure statement, got recovered 4 kg more, that too from the residential house, where they both live in a joint family, as stated in the petition. Still further, the mobile number by which there were about 35 calls between co-accused Gurjeet Singh-brother of the petitioner and co-accused Feroze Ali, from January, 2022 to 10.02.2022, was got reactivated by the petitioner on 12.02.2022, after arrest of his brother, which remained as such till 27.02.2022 and thereafter, again the petitioner got reactivated the same number on 26.02.2022 and there are call records of the petitioner having talked to co-accused Feroze Ali on 18.02.2022, 11.05.2022 and 14.05.2022, for which no satisfactory explanation came forth. In so far as filing of the petitions regarding false implication of his brother are concerned, the first of which, bearing No.CRM-M-11791-2022 was disposed of by this Court vide order dated 25.08.2022, Annexure P-7, by observing that nothing survives in the petition, as the investigation was complete and the challan had been presented by the SIT and the 2nd CRM-M-11630-2023, was ordered to be dismissed as withdrawn vide order dated

09.03.2023, Annexure P-9, after arguing the matter for some time, when the Court was not inclined to interfere. Furthermore, the SIT having duly enquired into the allegations levelled by the petitioner and having examined the CCTV footage, found the same as false.

9. Yet another fact that disentitles the petitioner from grant of concession of anticipatory bail is that he has, vide order dated 15.07.2023, passed by the Court of Illaqa Magistrate, Zira, declared him a proclaimed offender, to which the learned counsel for the petitioner pleaded ignorance. In **Lavesh v. State (NCT of Delhi)**, (2012) 8 SCC 730, Hon'ble The Supreme Court observed and held that, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. Further in **Vipan Kumar Dhir v. State of Punjab and another**, (2021) 15 SCC 518, Hon'ble The Supreme Court held that, "Even if there was any procedural irregularity in declaring the Respondent Accused as an absconder, that by itself was not a justifiable ground to grant pre-arrest bail in a case of grave offence..."

10. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 held thus:

“i. The nature and gravity of the accusation and the exact

role of the accused must be properly comprehended before arrest is made;

- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.

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11. It is manifestly clear that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

12. In **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

13. Considering the facts and circumstances of the case and the judgments referred to above, an element of criminality cannot be ruled out at this stage and the allegations being of such nature, the permission to join the investigation with a protective umbrella of pre-arrest bail will hamper the thorough and effective investigation to discover the modus operandi and elicit the truth; there being an apprehension of him influencing and threatening the witnesses or tampering with the evidence and fleeing from justice, more pertinently, when he has already been declared a proclaimed offender; his custodial interrogation is also stated to be imperative so as to complete the chain

of supply and also to ascertain the persons who may be involved in this nexus, this Court is not inclined to grant such relief to the petitioner.

14. The stringent provisions as contained in the statute, are to deal with the drug menace plaguing the society, as the youth are being led on a path having deleterious effects, thereby destroying the very social fabric.

15. In view of the forgoing discussion, the present petition being devoid of merits is hereby dismissed.

16. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

September 01, 2023
M.Kamra

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