

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

CRM-M-30781-2023

Date of decision : July 31, 2023

Sandeep Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Ms. Manpreet Ghuman, Advocates
for the petitioner.

Mr. Tarun Aggarwal, Senior DAG., Punjab.

PANKAJ JAIN, J. (ORAL)

1. Present petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail in FIR No. 63 dated 10.04.2023 for offences punishable under Sections 21, 29, 61 and 85 of the NDPS Act, 1985 registered at Police Station Sadar Samana, District Patiala the petitioner has preferred this petition under Section 438 Cr.P.C seeking pre-arrest bail.
2. As per the allegations levelled in the FIR it has been alleged as under:-

“It is recorded at this time that one ruqa has been received from ASI Pargat Singh 410/PTL CIA Samana for registration of FIR against Vipin Kumar son of Raj Kumar resident of ward no. 10, Krishna Basti Patran Police Station Sadar Patran District Patiala and Sandeep Sharma son of Tarsem Lal resident of Maleriya near Machhi Hatta Chowk, Samana Police Station City Samana, District Patiala under Section 21/61/85 NDPS Act through SC Hardeep Singh 2188/PTI. Copy of Ruqa officer incharge Police Station Sadar Samana, Jai Hind, Today ASI alongwith ASI Beant Singh 422/PTL, ASI Sewak Singh 1653/PTL, ASI Karnail Singh 3058/PTL, ASI Balkar Singh 2018/PTL, SI Hardeep Singh 2188/PTL, LC Kulwinder Kaur 3457/ptl on private vehicle and Govt Vehicle no. PB11BY6909 driven by Vicky Ram 1763 alongwith printer/ laptop presented at Bus Stand Mavi

Kallan for checking of bad And Suspicious persons The time was about 8.00 PM, Then informer gave secret information to me that Vipin Kumar son of Raj Kumar resident of ward no. 10, Krishna Basti Patran Police Station Sadar Patran District Patiala and Sandeep Sharma son of Tarsem Lal resident of Maleriya near Machhi Chowk, Samana Police Station City Samana, District Patiala, Who have car no. HT26BD4745 who are used to bring Heroin from Amritsar, Delhi, Rajsthan and sell their customer in Samana Patra, Patiala, Nabha. Now they are going to sell their heroin If the raid is conducted, thay could be intercepted and cache of huge recovery could be affected from them. Information is true and reliable. So, Vipin Kumar son of Raj Kumar resident of ward no. 10, Krishna Basti Patran Police Station Sadar Patran District Patiala and Sandeep Sharma son of Tarsem Lal resident of Maleriya near Machhi Hatta Chowk, Samana Police Station City Samana, District Patiala has committed the offence after keeping in his possession and has committed offence by supply it, have committed offence under section 21,61,85 NDPS Act, So ruqa has been typed for registration of Fir, Printout has been taken and being sent against that Vipin Kumar son of Raj Kumar resident of ward no. 10, Krishna Basti Patran Police Station Sadar Patran District Patiala and Sandeep Sharma son of Tarsem Lal resident of Maleriya near Machhi Hatta Chowk, Samana Police Station City Samana, District Patiala so the incharge of Police station has been informed at wireless set regarding the secret information. And requested to send the next investigation officer at the spot. Sd/Pargat Singh ASI, CIA Samana at 08:30PM on 10.04.2023.”

3. The role attributed to the petitioner is that he has been nominated by a statement made by co-accused who named him to be the actual source.
4. Learned counsel representing the petitioner has tried to make out a case claiming that at the given time the petitioner was at Mansa Devi Mandir, Chandigarh and in order to substantiate the same reliance has been placed upon the receipt Annexure P-2.

5. Learned State counsel has filed a response spelling out the mode and manner in which the evidence collected till date drives the offence upto the petitioner stating as under:-

“That the contents of para No. 4 of the petition are incorrect, hence denied. It is pertinent to mention here that the above noted case was registered at P.S. Sadar Samana on 10.04.2023 on sending Ruqa by ASI Pargat Singh, CIA Samana and after registration of the above noted case, the I.O., ASI Jaswinder Singh CIA Samana, who recovered the mobile from the above noted car at the time arrest of co-accused Vipin Kumar of the petitioner along with 01 Kg Chitta and mobile. So there was no question of calling the petitioner in Police Station Sadar, Samana nor has the petitioner mentioned that by whom he was summoned for the investigation of which case. So, the petitioner has concocted a false and frivolous story in this para of the petitioner.

That the contents of para No. 5 of the petition are incorrect, hence denied. On checking the above noted car by IO. ASI Jaswinder Singh on 10.04.2023, a blue (purple) Samsung mobile phone was found near the conductor seat of the said car, which was having IMEI no. 351026182251421/01 and second IMEI no. 351374212251429/01 having SIM no 79734-18181 and 98150-17069 and on the mobile three SIM numbers i.e. 79734-18181, 98150-17069 and 87985-66156 WhatsApp were running. 98150-17069 belongs to the petitioner. At 21.25.48 hrs its location has come at village Shahpur, Tehsi Sama District Patiala as calls details. This proves that the person ran away from conductor seat was the petitioner Copy of call details is attached herewith as Annexure 2. So, the petitioner has put up a concocted story in this para of the petition regard his presence on 10.04.2023 at 21:25:48 hrs in the night.”

6. I have heard learned counsel for the parties and have gone through the record 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's case (supra)**, 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....

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. “

Further Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and another 2022 (4) RCR Criminal) 977** held as under:

“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 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. As per settled law (in C.B.I vs. Anil Sharma, 1997(7) 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 allowed to be belayed.
10. The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.
11. In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.
12. Needless to say nothing recorded hereinabove should be construed as expression on merits of the case

July 31, 2023
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(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable :	No