

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

105

CRM-M-31542-2023 (O&M)

Date of decision: 06.07.2023

Maninderpal Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. K.S. Brar, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No.139 dated 17.05.2023, registered under Section 15 of the NDPS Act, at Police Station Raman, District Bathinda.

2. Briefly put, the facts of the case are that on 17.05.2023, a secret information was received that two persons namely Gurwinder Singh and Maninderpal Singh were indulging in the sale of poppy husk and on that day too, they were said to have purchased the same and kept it in their house. Thereafter, on the basis of secret information, a raid was conducted and 54 kg of poppy husk along-with Rs.50,000/- drug money were recovered from the house of the petitioner.

3. Learned counsel contends that the petitioner has been falsely implicated in the present case. The alleged recovery so effected is from a joint family house, that was not exclusively in his ownership nor was he present at the

time of recovery. The petitioner is ready and willing to join the investigation and cooperate with the investigating agency. Thus, learned counsel prays for grant of anticipatory bail to the petitioner. Reliance is placed on the order passed by Hon'ble The Supreme Court in Special Leave to Appeal (Crl.) No. 12013/2022, titled **Subodh Kumar Sagar @ Subodh Kumar Sah vs. State of Bihar**, dated 15.02.2023.

4. Learned State counsel opposes the prayer on the ground that the raid was conducted on secret information wherein the petitioner and his brother were specifically named and commercial quantity of contraband had been recovered from the house where they resided, along with other family members. Had it been a case of false implication, then even the other members of the family could have been mentioned. The mandate under Section 100(4) Cr.P.C., had been complied with in pursuance of which, an independent witness was joined at the time of recovery. The case is still being investigated, thus the custodial interrogation of the petitioner is required in the instant matter to find the source and the entire chain of supply of contraband.

5. Heard.

6. In the present case, there was a secret information received by the police against the petitioner and his brother. Recovery was effected from the house where the petitioner was residing, a fact admitted in para 5 of the petition. During the raid, even an independent witness was joined. Commercial quantity of contraband as well as Rs. 50,000/- drug money were recovered. Hon'ble The Supreme Court in Special Leave to Appeal (Crl.) No. 9680/2022 dated 07.11.2022, has even dismissed an appeal filed against the order of a coordinate bench of this Court in CRM-M-44196-2022 titled as **Gurpreet Singh vs. State of**

Punjab, decided on 23.09.2022, wherein the petition for grant of anticipatory bail to the petitioner on the ground that commercial quantity of contraband had been recovered and his name surfaced based on the disclosure statement of co-accused, had been dismissed.

7. Hon'ble The Supreme Court in **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, while expounding the law on anticipatory bail relied on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 and 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.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

8. The petitioner does not have clean antecedents as he is involved in another case, though under IPC, however his brother is involved in 4 other cases, 3 under IPC and 1 under Excise Act. The allegations against him call for a deeper probe, to unearth the modus operandi, source of origin, chain of supply and find out the involvement of other persons therein, for which the custodial interrogation of the petitioner is required in the case wherein investigation is going on. Thus, the grant of pre-arrest bail in the present case shall be detrimental to the investigation. Hon'ble The Supreme Court in **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268, 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.

9. A gainful reference can be made to the judgment in **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, where Hon'ble The Supreme Court 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.”

10. 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.

11. Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

July 06, 2023
M.Kamra

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