

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

CRM-M-52383-2023
Date of decision : 19.10.2023

BALWINDER KUMAR

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

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

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Apprehending his arrest in FIR No.75, dated 18.08.2023, registered for offences punishable under Sections 22 of NDPS Act, 1985 and Section 29 of the NDPS Act added later on, at Police Station Sadar Banga, District SBS Nagar, 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 :

“ The SHO PS Banga Sadar Jai Hind. Today I SI alongwith ASI Sikander Pal No.398/SBSN, CT Jasvir Singh No.667/SBSN, S/L/CT Harvinder Kaur No.1017/SBSN for patrolling and checking of bad elements on a private vehicle alongwith investigation kit and laptop and printer were going from village Thandia, Khatkar Kalan to Kahma side. When the police party was going little ahead Railway Station Khatkar Kalan, time was about 4.10 p.m. that from the side of village Kahma one woman was seen

coming on foot, who on seeing the police party got perplexed and tried to turn towards her left side. While turning the woman threw glazed envelope towards her left side on katcha side of the road and turned in a hurry. She was overpowered by I SI with the help of co-officials and asked her name and address, who told her name Manjit Kaur wife of Harjit Ram, resident of KingraChoaWala, Police Station Bhogpur, District Jalandhar. I SI introduced myself to her about my name, rank and posting. At the spot public witness was tried to be joined but no body was ready to join in the police party and everybody cited his helplessness, Then I SI took accused Manjit Kaur wife of Harjit Ram, resident of Kingra Choa Wala, Police Station Bhogpur, District Jalandhar and checked the glazed envelope which she had thrown at the katcha place of the road and from the transparent envelope 22 strips of Alprazolam tablets IP Trika-0.5 intoxicant tablets, and in every strip 15 tablets, total 330 intoxicant tablets were recovered, whose date of manufacturing and expiry date were deleted, were recovered. The recovered Alprazolam tablets IP-Trika 0.5 total 330 intoxicant tablets were put by ISI in the same transparent envelope and separate parcel was prepared. The parcel was sealed by I SI with my seal. RP. Sample seal RP was prepared in triplicate. The seal after use was handed over to ASI Sikander Pal No.398/SBSN. Then I SI took in police possession above one envelope which contained 330 intoxicant tablets alongwith sample seal RP through separate recovery memos. Accused Manjit Kaur wife of Harjit Ram, resident of Kingra ChoaWala, Police Station Bhogpur, District Jalandhar by keeping in her possession Alprazolam tablets IP-Trika 0.5 total 330 intoxicant tablets has committed offence under Section 22-61-85 NDPS Act. She could not produce any permit or license for the intoxicant tablets. On this by preparing special report under section 57 NDPS Act is being sent to Superintendent Officer, Sub Division Banga. After writing a ruqa against Manjit Kaur wife of Harjit Ram, resident of Kingra ChoaWala, Police Station Bhogpur, District Jalandhar for registration of case for offence under section 22-61-85 NDPS Act is being sent through CT Jasvir Singh No.667/SBS to police station alongwith special reports. After

registration of the case its number be intimated. Special reports be prepared and sent to the Illaqa Magistrate. ”

3. Counsel for the petitioner submits that no recovery has been effected from the petitioner. He has been implicated only on the disclosure made by co-accused namely Manjjit Kaur from whom intoxicating tablets were recovered and apart from the said disclosure, no incriminating evidence is available against the petitioner. He further contends that the said recovery was effected prior to the disclosure of co-accused and thus provisions of Section 27 of the Evidence Act would not be attracted. Hence, the petitioner be granted concession of pre-arrest bail.

4. Per contra, Mr. Aggarwal submits that the petitioner is a history-sheeter and has three more FIRs registered under the NDPS Act. Thus, he does not deserve any concession by this Court.

5. Controverting the aforesaid argument, Counsel for the petitioner submits that the petitioner is already on bail in that FIRs.

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

6. 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)

6. 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.”

7. Keeping in view that the petitioner is a prior convict and that too under the NDPS Act, this Court is not inclined to grant him any relief at this stage.

8. Accordingly, the petition is dismissed.

October 19, 2023
Dpr

(Pankaj Jain)
Judge

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