

2023:PHHC:044041

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

CRM-M-56147 of 2022

Date of decision: 23.03.2023

Bunty

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Mohd. Yusaf, Advocate, for the petitioner.
Mr. Jashanpreet Singh, DAG, Punjab.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.203 dated 16.11.2022 under Sections 379, 420 IPC and Section 7 of the Essential Commodities Act, registered at Police Station Division No.6, Jalandhar, District Jalandhar.

FIR in the present case was registered on the basis of ruqa sent by Lady SI Manju Bala with the allegations that she alongwith other police officials was present in the area of Diarian Chownk, where she received secret information that petitioner-Bunty son of Samual Kaka used to commit theft of gas from gas cylinders and used to sell the gas cylinders with less gas to general public. Secret informer further informed that if raid be conducted at his residential house, petitioner could be apprehended red handed while committing theft of gas and gas cylinders can be recovered. On the basis of said ruqa, FIR under Section 379, 420 of IPC and 7 of Essential Commodities Act was

2023:PHHC:044041

registered. Thereafter, raid was conducted at the disclosed place and 14 gas cylinders alongwith tool used for extracting the gas were recovered. However, petitioner could not be apprehended.

On issuance of notice of motion, status report by way of affidavit of Randhir Kumar, IPS, Assistant Commissioner of Police-IV, Model Town, Jalandhar, has been filed on behalf of the respondent-State, wherein it has been stated that apart from the present case, petitioner is also involved in another case bearing FIR No.28 dated 03.03.2021 registered under Sections 379, 420 IPC and Section 7 of the Essential Commodities Act.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He further submits that there is no complaint by anyone that his gas cylinder has been stolen or petitioner had sold him gas cylinder containing lesser gas and, therefore, no offence under Section 379 or 420 IPC is made out. He further submits that petitioner is ready and willing to join the investigation.

Per contra, learned State counsel submits that apart from the present case, petitioner is also involved in FIR No.28 dated 03.03.2021 registered under Sections 379, 420 IPC and Section 7 of the Essential Commodities Act, in which also similar type of allegations has been levelled against the petitioner and, therefore, petitioner being habitual offender is not entitled for grant of anticipatory bail.

I have heard learned counsel for the parties and perused the record.

2023:PHHC:044041

Earlier, the petitioner had filed application seeking anticipatory bail before the Court of learned Additional Sessions Judge, Jalandhar, which has been dismissed vide order dated 25.11.2022 by observing as under: -

“8. Present case has been registered against applicant/accused for commission of theft of gas from the gas cylinders and selling the gas cylinders with less gas to the general public. Earlier also, a case bearing FIR no.28 dated 03.03.2021 was registered against applicant/accused for commission of similar offences under Sections 379, 420 of IPC and Section 7 of Essential Commodities Act when he was found in possession of 20 gas cylinders. Thereby, applicant/accused is a habitual offender. As far as recording statements of witnesses regarding theft of gas cylinders or sale of the same is concerned, investigation is still at its initial stage and it cannot be said that no offence under Section 379 or 420 of IPC is made out against applicant/accused. Learned counsel for applicant/accused could not explain as to how applicant/accused came in possession of 14 gas cylinders and tool for extracting the gas recovered from his house. Applicant/accused is not stated to be associated with any gas agency. Therefore, applicant/accused is a habitual offender and his custodial interrogation is required in this case. Keeping in view these facts and circumstances, applicant/accused does not deserve extra ordinary relief of anticipatory bail and his custodial interrogation is necessary to further investigate into the matter.”

As per law laid down by the Hon'ble Supreme Court in

State of Madhya Pradesh v. Pradeep Sharma (2014) 2 Supreme Court

Cases 171, power exercisable under Section 438 Cr.P.C. is somewhat

2023:PHHC:044041

extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his/her liberty.

Reliance can be placed upon the Hon’ble Supreme Court dictum passed in *Prem Shankar Prasad v. The State of Bihar and another, 2021(4) RCR (Crl.) 598* and *Anil Kumar Singh v. High Court of Judicature at Patna through its Registrar General and another, (2020)19 Supreme Court Cases 364* whereby the Hon’ble Apex Court had denied the concession of anticipatory bail in view of the gravity of offences and the conduct of the petitioner.

Keeping in view the facts and circumstances of the case, role attributed to the petitioner, gravity of offence and the fact that investigation is at initial stage, petitioner does not deserve the concession of anticipatory bail, as his custodial interrogation is necessitated in the present case.

The present petition is accordingly dismissed.

However, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

23.03.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No