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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision: 26.04.2023

Sukhwinder Singh @ Sukhvinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Atul Lakhanpal, Senior Advocate, assisted by
Mr. Kanwar Inder Singh, Advocate
for the petitioner.

Mr. Subhash Godara, Additional, A.G., Punjab.

HARSH BUNGER, J. (Oral)

Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.54, dated 22.10.2022, registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Dharamgarh, District Sangrur.

2. On 24.02.2023 the following order was passed by this Court :-

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This is an application for placing on record the counter affidavit of the petitioner in response to the status report dated 16.02.2023 submitted by the respondent-State as well as Annexures A-1 to A-3.

For the reasons stated in the application, the same is allowed, as prayed for. Annexures A-1 to A-3 are taken on record, subject to all just exceptions.

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Prayer in the present petition, filed under Section 438 of the Code of Criminal Procedure, is for grant of anticipatory bail to

the petitioner in case FIR No.54 dated 22.10.2022, registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Dharamgarh, District Sangrur.

Succinctly, the above-said case FIR was registered on the basis of secret information that Santroop Singh @ Santa son of Gurdial Singh resident of Ganduan, Police Station Dharamgarh is habitual of bringing large quantity of poppy husk from outside and selling the same. It was further Informed that on that day i.e. 22.10.2022, said Santroop Singh @ Santa had brought huge quantity of poppy husk and near his fields at Ganduan to Sangatpur road, on the left side of the road in his Guava garden, he had kept the same and waiting for the customers. The police officials were informed that if a raid was conducted immediately, then said Santroop Singh@ Santa could be caught red handed with huge quantity of poppy husk. On the basis of secret information, a ruqa was prepared and sent to the police station for registering the FIR against Santroop Singh @ Santa son of Gurdial Singh. On receipt of ruqa in the police station, the above-said FIR was registered.

A perusal of the paper-book would reveal that on the basis of above-said FIR, a raid was conducted and four plastic bags, each containing 20 kgs. and 500 grams of poppy husk (pods) i.e. total 82 kilograms was recovered from Santroop Singh @ Santa and the said recovered contraband was taken into possession vide memo along with 20 empty 'lifafas'.

It appears from the paper-book that on the basis of disclosure statement made by Santroop Singh @ Santa during on-going investigation, the petitioner has been nominated as an accused under Section 29 of the Narcotic Drugs and Psychotropic Substances Act.

Apprehending arrest, the petitioner had applied for anticipatory bail before the Judge, Special Court, Sangrur, which was dismissed vide order dated 06.12.2022. Accordingly, the present petition has been filed before this Court seeking anticipatory bail in the above said case FIR.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. He further submits that the petitioner has not been named in the FIR and neither anything has been recovered from him. It is submitted that the petitioner has been nominated as an accused in this case on the basis of an alleged confessional statement of co-accused Santroop Singh @ Santa, from whom, 82 kgs. of poppy husk was recovered. Learned counsel for the petitioner further submits that the petitioner has no concern with the co-accused Santroop Singh @ Santa and apart from the afore-said alleged disclosure statement, there is no other material/evidence to connect the

petitioner with the alleged crime. Learned counsel has also submitted that in fact, the petitioner has an inimical relation with one Deputy Superintendent of Police and some proceedings are pending between them; therefore; on account of the said dispute, the petitioner has been falsely implicated in this case at the instance of said Deputy Superintendent of Police. It is also the submission of learned counsel for the petitioner that even the identity of the petitioner would be a debatable issue in this case because as per the status report, the reference is made to one Kala and the petitioner has been nominated by stating that Kala was verified to be Sukhwinder Singh @ Sukhvinder Singh i.e. the petitioner. Learned counsel has also submitted that the petitioner is not involved in any other case and his application for anticipatory bail has been wrongly dismissed by the Judge, Special Court, Sangrur vide order dated 06.12.2022 (Annexure P-2). Learned counsel further submits that the petitioner is ready and willing to join investigation as and when required by the Investigating Agency or as directed by this Court/trial Court.

Upon issuance of notice in this case, learned State counsel had filed a status report by way of an affidavit of Shri Prithvi Singh PPS, Deputy Superintendent of Police, Sub Division, Dirba, on behalf of respondent-State of Punjab, which is already on record.

In the above-said status report, it is stated as under :-

“During ongoing investigation, on interrogation, accused Santroop Singh @ Santa disclosed that Karaka Singh r/o MeondKalan, P.S. Jakhal and I were lodged in Sangrur jail in another case and during this period, Karaka Singh told me that his son Kala do the work of selling the poppy husk and if, you start to sell the poppy husk, then his son will assist you in this business. After releasing from the jail, I met with the son of Karaka Singh at his Dhaba situated at village MeondKalan, P.S. Jakhal (Haryana) and a deal of supplying the poppy husk to me at the rate of Rs.3000/- per kg was settled and I showed him the various places, at which, Kala Singh had to supply the poppy husk to me, however, we never talked to each other through telephone. The poppy husk, which has been recovered from me, that was supplied to me by Kala Singh in my fields on 21.10.2022 in the morning and I gave him the due amount as per the rate of Rs.3000/- per kg. and I had to sell the poppy husk to my customers at the rate of Rs.5000/- per kg, however, I have been apprehended along with 82 kg. poppy husk.” On the basis of said disclosure, Kala S/o Karaka Singh r/o Meond, P.S. Jakhal (Haryana) was nominated as an accused u/s 29 NDPS Act on 23.10.2022. On the same day, A.S.I. Beant Singh along with police party and accused

Santroop Singh @ Santa raided the Dhaba of Karaka Singh situated at Bhuna road, Meond (Haryana) and SatvirSinghson of Karaka Singh was found present, who disclosed that Kala @ Chhinda @ Surinder is my brother and 10/15 more persons were also present there, out of which, one clean shaven person who was wearing red colour shirt, was recognized as Kala by accused Santroop Singh @ Santa that he is the same person, who had supplied me poppy husk. However, the gathering present at the Dhaba came forward and started arguing with the police party as well as with accused Santroop Singh @ Santa and attempted to grapple. However, keeping in view the tense situation, the police party deemed beter to go from the Dhaba. Due to which, Kala could not be arrested. However, the complete name and address of above said Kala was verified to be Sukhwinder Singh S/o Karaka Singh R/o Meond, District Fatehabad, P.S. Jakhal (Haryana). ”

Still further, regarding the antecedents of the petitioner, it has been mentioned in the status report that other than the instant FIR, there is no other criminal case pending against him.

In order to counter the stand taken in the status report, learned counsel for the petitioner has filed a counter affidavit by moving an application (CRM-9229-2023), wherein, it has been stated that the alleged disclosure statement of co-accused Santroop Singh @ Santa is totally false and baseless. It has been stated that the stand taken in the status report that Santroop Singh @ Santa met Karaka Singh resident of MeondKalan when they were both lodged in Sangrur jail in some other case, then Karaka Singh had told him that his son Kala was doing the work of selling poppy husk and in case, he (Santroop Singh @ Santa) started to sell the poppy husk, then his son will assist him in the business; is absolutely false and incorrect as Karaka Singh father of the petitioner had already expired on 17.11.2019 and in support of the same, he has placed on record the death certificate dated 04.12.2019 as Annexure A-1, which has been taken on record, subject to all just exceptions.

Learned counsel for the petitioner has further submitted that the version of the prosecution is further falsified from the remand papers submitted before the Illaqa Magistrate on 22.10.2022, when the police has sought two days' police remand from the concerned Court by moving an application; however, the police was given only one day remand of Santroop Singh @ Santa and on the next day i.e. 23.10.2022, the prosecution had submitted an application for judicial remand, which was allowed and in the application for judicial remand, there is no mention of any disclosure statement made by Santroop Singh @ Santa.

Learned counsel appearing for the State opposes the petitioner's anticipatory bail on the ground of seriousness of offence. However, it is not disputed by the learned State counsel that the petitioner is not named in the FIR and he has been nominated as an accused only on the basis of a disclosure statement made by Santroop Singh @ Santa and no recovery has been effected from the petitioner. It is also not disputed that there is no other case against the petitioner, except the present one. Learned State counsel has also not disputed that apart from the disclosure statement, there is no other material/evidence as on date which would show complicity of the petitioner with the alleged crime.

List on 26.04.2023.

Without commenting anything on the merits of the case, petitioner is directed to join the investigation as and when directed by the investigating agency, however, in the event of arrest of the petitioner, he shall be released on ad interim bail to the satisfaction of the Investigating/Arresting Officer and shall abide by the terms and conditions laid down under Section 438(2) Cr.P.C."

3. Learned counsel for the petitioner submits that pursuant to the aforesaid order, the petitioner has joined the investigation.
4. Learned State counsel on instructions from ASI Beant Singh has not disputed the aforesaid fact of joining of investigation by the petitioner and submits that his custodial interrogation is not required at this stage.
5. Heard learned counsel for the parties.
6. Since the petitioner has joined the investigation and his custodial interrogation is not required at this stage, the present petition is allowed and the ad-interim order dated 24.02.2023 passed by this Court is made absolute.
7. However, the petitioner shall continue to join the investigation as and when required to do so and abide by all the conditions laid down under Section 438(2) Cr.P.C.
8. It is made clear that if the petitioner fails to comply with any of

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the bail conditions laid down under Section 438(2) Cr.P.C, the State would be at liberty to move an application for cancellation of this anticipatory bail granted to the petitioner.

9. Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for anticipatory bail at this stage.

10. The petition is accordingly disposed of.

26.04.2023
Himani

(HARSH BUNGER)
JUDGE

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