

2023:PHHC:144287

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

**CRM-M-57202-2023
DECIDED ON: 14.11.2023**

KAMALJEET ALIAS GOLI**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Sahil Choudhary, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court invoked under Section 438 Cr.P.C., for the second time for grant of anticipatory bail to the petitioner in FIR No.388 dated 09.10.2023, registered at Police Station Bilaspur, District Yamuna Nagar under Sections 22(b) of NDPS Act, 1985.

The contents of the FIR reads as under:-

“To, S.H.O Police Station Bilaspur Sir, It is requested that 1, Praveen Kumar, son of Surendra Kumar, resident of Azizpur Nai Abadi, on 9.10.2023, I and Gurmeet, son of Mehar Singh, resident of New Abadi, Azizpur. When we were returning home after paying obeisance at Maadi, when we reached near Kheda temple at around 8.00 pm, three boys were coming on foot from the village street, who started running after seeing us and when we got suspicious about them. So we two friends ran after them, two boys ran away sitting on a motorcycle and when we caught the third boy, that boy took something out of his pocket and threw it on the side and when we picked it up, we found two leaf of capsules, one of which contained 8. There were 7 capsules in the

capsule and the other leaf, out of which one was an ejected capsule, which was a total of 15 capsules. He was asked for the name of his address, he disclosed his name Vikram alias Vicky, S/O Suresh Kumar, resident of Pensal and the names of his absconding associates, manga son of Labh Singh, Golison of Karnail Singh. Resident of village pencil and said that it was a drug capsule. We informed the police by calling and when you came to the spot, we have handed over the above named Vikram alias Vicky and the 15 intoxicating capsules recovered from him to you. Legal action should be taken. SD Parveen Kumar Praveen Kumar son of Surendra Kumar resident of new population Azizpur police station Bilaspur district U. Nagar 7056190006. Action Police:- Today, on 9.10.2023, Bajariya telephone information was received in the police station that a boy has been caught with intoxicating capsules in village Azizpur Kalan Nai Abadi, on information, ASI May ASI Balbir Singh No. 703 and SPO Naresh Kumar reached the spot of 103 where Praveen Kumar, son of Surendra Kumar, resident of village Azizpur Kalan, New abadi Police Station Bilaspur District yamunanagar, recovered 2 intoxicating leaves capsules from the accused Vikram alias Vicky and the above accused, on which DICYCLOMINE HCI, TRAMADOL HCI ACETAMINOPHEN CAPSULE B. NO. MTPC-013 MFG. 08/2022 EXP. 07/2024 MFG. LIC. NO. S-MNB/10/65 MFG BY LABORATE PHARMACEUTICALS INDIA LTD. (UNIT-II) 31, RAJBAN ROAD, NARIWALA PONTA SAHIB (H.P) Which has 8 capsules in one leaf and 7 capsules in one leaf out of which one capsule has come out. A total of 15 capsules have been recovered. After that, at 09.30, the ASI contacted Smt. Ritu Female Drug Control Officer from her mobile number 9416953349 and informed about the situation on her mobile number 925820008, who informed me on the phone that the photo of the intoxicating capsules was taken out in the verandah and 5 capsules were weighed, weighed and Write a separate application and send it to me through WHATSAPP, whatever you feel like. ASI took out 5 capsules from the capsule leaf and weighed them with an electronic fork, the weight of 5

capsules was 3.22 gm, which was a total of 15 capsules. The total weight of the capsules was 9.66 gm, which was a total of 15 capsules. After taking a photo of the capsules and writing a separate application, it was sent on WHATSAPP to the mobile number 9258200008 of the District Drug Control Officer, Yamunanagar and it has also been written in the application for opinion that these intoxicating capsules come under the category of NDPS ACT and Veranda capsules are kept separately. The palanda was prepared and sealed with 3 BS stamps and a sample seal was prepared separately and after the stamp was handed over to ASI Balbir Singh who used the palanda, the drug capsules and the sample seal were seized by Fard as evidence in the police. Fard recovery of intoxicating capsules was prepared. Accused Vikram alias Vicky and witness put their 2 signatures on Fard and Vikram alias Vicky committed the crime of illegally keeping 15 intoxicating capsules Tramadol in his possession under Section 22(b)-61-85 of NDPS ACT. On which a complaint has been written and the charges have been registered against him, SPO Naresh Kumar no. 103 is being sent to Bilaspur police station. Later, the case number mentioned in the case should be informed from the case. I am busy investigating the incident with my fellow ASI employee. AZ:- New Basti Azizpur Kalan SD Lakhvinder Singh ASI Police Station Bilaspur Dt. 9.10.2023 AT 10.15 PM. AZ Police Station - Hasb Aamd Article On receiving the above mentioned SPO Naresh Kumar in the police station, serious crime under section 22 (b)-61-85 of NDPS Act was registered, case no. 388 dated 09.10.2023 section 22 (b) -61-85 NDPS ACT Police Station Bilaspur has been registered and copies of the FIR are being prepared by the computer as a special report and are being sent to Bajaria GMAIL Mr. Area Magistrate, Bilaspur, Mr. Superintendent of Police, Yamunanagar, Mr. Deputy Superintendent of Police, Bilaspur. The original article, along with the copied police, was given to the incoming SPO and sent to the NIJD researcher. Indraj record was done as per law. First Information Report was filed in the presence of SI/SHO Gyan Singh 161/A”.

2. Learned counsel for the petitioner when countered with the question as to how the second anticipatory bail petition is maintainable and under which changed circumstances, this Court has been approached for the second time seeking the relief of anticipatory bail, he refers to the affidavit of Parveen Kumar s/o of Surender Kumar, the complainant according to which he made a valiant attempt to convince this Court that the complainant has stated to the effect that the petitioner was neither seen at the above mentioned address nor was present at the spot and was nominated at the behest of Vikram @ Vicky alone. The deponent in that affidavit in para 4 also suggests that he has no objection, if the Court releases the petitioner on bail further declaring that it will not happen in future.

3. Having gone through the contents of the affidavit as well and the reason i.e., solely the affidavit filed before this Court by the complainant with the contents as mentioned in paras 3 to 5 in particular, which read as under:-

3. That in the above case, Vikram alias Vicky had given the names of the above mentioned two boys, whereas I, the affiant, have neither seen the above mentioned Goli, son of Karnail Singh on the spot nor was the above mentioned Goli present on the spot. I, the affiant, have registered the name of the above mentioned Goli in the case only at the behest of Vikram alias Vicky. Because now I, the swearer, have completely satisfied myself. And only after calming down I came to know that the above Goli S/o Karnail was not there.

4. That if the police removes the name of Goli S/o Karnail Singh from the above case, then in that case I, the affiant, have no objection and if the Honorable Court releases Goli on bail, then in that case also, the affiant has no objection and Nor will it happen in the future.

5 That if my statement is found wrong then in that case Section 182 Cr.PC will be filed against me. Legal action can be taken under this.

4. Though, it cannot be a ground for second anticipatory bail before this Court, as it cannot be considered to be a changed circumstance, wherein the said affidavit is to be proved by way of leading evidence before the trial Court and in any case, if the complainant has no grievance against the petitioner, a deposition qua that needs to be made before the trial Court, while appearing in the witness box or shall make a statement before the prosecuting agency, since the challan has not been filed so far and investigation is yet to be completed, which may lead to cancellation of FIR, if at all the complainant-deponent is willing to exonerate the petitioner and desires to settle the matter amicably.

5. The constitutional Bench of the Apex Court has interpreted Section 438(1) of Cr.P.C., in the case of **Gurubaksh Singh Sibbia vs. State of Punjab, ((1980)2 SCC 565)**, which indicated:-

"Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The application must show that he has 'reason to believe' that he may be arrested for a non-bailable offence. The use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not belief for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general

allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applicants for anticipatory bail will be, as large as, at any rate, the adult populace. Anticipatory bail is a device "to secure the individual's liberty". it is neither a passport to the commission of crime nor a shield against any and all kinds of accusations, likely or unlikely."

6. Apart from that, the question "can a formula be devised conferring the power of granting anticipatory bail in straight jacket?" was answered in the negative observing that while laying down cast iron rules in a matter like granting anticipatory bail, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situation. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions and it will be strange, if, by employing judicial artifices and techniques, discretion conferred upon the Courts is cut down by devising a straight jacket formula. Going further, I noticed that the Hon'ble Constitution Bench narrated the situation and contingencies for invoking power under Section 438 indicating in para 8 of the judgment of ***Gurubaksh Singh Sibbia vs. State of Punjab*** (*supra*), which reads as under:

"No one can accuse the police of possessing a healing touch nor indeed does anyone have misgiving in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all that follows upon a police arrest with a certain amount of sangfroid, in so far as the ordinary rule of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminals to needless harassment. But the crimes, the

criminals and even the complainants can occasionally possess extraordinary features. When the even flow of the life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973".

7. Having discussed the factual and legal chronology, this Court convincingly able to observe that while exercising powers under Section 438 Cr.P.C., the Court is duty bound to strike a balance between the individuals right to personal freedom and the investigational right of the police, therefore, the provisions of anticipatory bail cannot be allowed to put to abuse at the instance of unscrupulous petitioners.

8. Accordingly, the second or subsequent bail application under Section 438 Cr.P.C., can be filed, if there is a change in the fact-situation or in law, which requires the earlier view being interfered with or where the earlier finding has become obsolete. An accused, who has been denied the bail earlier can move a subsequent application only on in that limited area. If the issue, which had been canvassed earlier, would not be permitted to be re-agitated on the same grounds, as

it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

9. In light of the discussions made hereinabove as well as the dictum of the Apex Court, this Court is of the considered view that the second anticipatory bail petition would only be maintainable on the ground of changed circumstances and in present case in hand, the petitioner has failed to show any changed circumstances except for the fact that the complainant has filed an affidavit stating that he has no objection, in case, this Court releases the petitioner on bail, to which this Court is not satisfied.

10. Hence, the petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

14.11.2023

Meenu

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