

2024:PHHC:036067
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

204

CRM-M-5680-2024
Date of Decision : **March 13, 2024**

SHUBHAM BANSAL @ SHIV KUMAR BANSAL

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Vishal Nehra, Advocate
for the petitioner.

Mr. Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition filed under Section 438 Cr.P.C., prayer is made for grant of anticipatory bail to the petitioner in case FIR No. 353 dated 03.12.2023 under Sections 22-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 201 of IPC 1860 and Section 29 of NDPS Act added later on), registered at Police Station, City Kharar, District Mohali.

2. The asked for relief has been sought by the petitioner on the ground that he has been falsely implicated in the present case and no recovery has been effected from him and he has been arraigned only on the disclosure statement of the co-accused which is not admissible evidence in the eyes of law.

3. The prosecution agency recorded the instant FIR on a complaint made by ASI Harbej Singh, the contends of which read as under:-

“Copy of Ruqa, SHO, Police Station City Kharar, Jai Hind’. Today I ASI along with SI Deepak Singh 149, ASI Karanveer Singh 2278, ASI Amritpal Singh 593, CT Amritpal Singh 2143, on Government Vehicle bearing No. PB-65-AH-3661 having Investigation Kit, Laptop-Printer were present at barricade near Christian School on Mohali to Kharar Road. At about 09:30 AM, one Private Bus bearing No. UP-51-AT-2231, which was coming from Mohali side was stopped for general checking. On asking about the baggage, parcels etc. luggage kept in the bus dickey. the driver told that the responsibility of keeping and unloading the passenger's luggage in the bus dickey is of the helper Shaqib son of Attu son of Islam, resident of village Atsaini, Police Station Gadh Mukteshwar, District Hapur, UP. That the luggage including Bags/Purses etc. placed in the bus dickey were being checked in presence of the owners of the respective luggage. On asking the bus helper Shaqib about one cardboard box placed in the dickey he said that this cardboard box was given to me by someone from unknown person at Badayu, UP, who told me that there are baby's nappy pads in this cardboard box, which are to be delivered at Hoshiarpur and he told me to call on Mobile No. 81468-02047 on reaching Hoshiarpur Bus Stand, the person himself will come and will took the parcel from you. That SI Deepak Singh wanted to open the cardboard box for its general checking, then Saqib said that how can you open the parcel like this, I will not let you open this parcel. Regarding this debate, SI Deepak Singh informed me/ASI, then I/ASI informed Shagib about his legal right regarding search of the under Section 50 NDPS Act. Who said that I will allow this cardboard box to be opened only in the presence of some Gazetted officer. In this regard, the aforesaid ASI prepared non-consent memo of the above mentioned Shaqib, on which said Shaqib put his signature and the witness also put their testimony. I/ASI informed Sh. Karan Singh Sandhu, PPS, DSP Sub-Division Kharar-1 at

about 11:20 AM, I/ASI called from my mobile No. 98557-44144 on worthy DSP's mobile No. 98878-00001 and informed him about the situation and requested him to reach at the Spot. That at about 11:45 AM, worthy DSP in official uniform came present at the spot. He asked Shaqib about his name & address and then, he disclosed his identity and told him that I am Deputy Superintendent of Police (Sub Division Kharar- 11. posted at District SAS Nagar and I am Gazetted Officer of the Punjab Government and I suspect some intoxicant substance OF some illegal article in this cardboard box, hence search of your cardboard box is necessary. Worthy DSP Sahib while giving Notice under Section 50 NDPS Act to Saqib informed him that you have legal right as per law that you can get the search of your parcel in bus conducted from another Gazetted Officer or from some Magistrate, who can be called at the spot or you can be taken to them, to which Saqib said that I have full faith in you, you can search me and the parcel lying in bus. His consent memo under Section 50 NDPS Act was prepared. The said memo was signed by Saqib and witnessed by the witnesses. Then, in the presence of bus driver Shaqib son of Kafeel son of Sabir. resident of village Atsaini. Police Station Gadh Mukteshwar, on the instructions and in presence of worthy DSP, I/ASI started searching the parcel found in the dickey of the bus belonging to Shaqib and strips of intoxicant tablets make Tramwel SR 100 Tramadol Prolonged Release Tablets IP and CORLIVIDOL-100 SR Tramadol Prolonged Release Tablets were recovered. TRAMWEL SR 100 Tramadol Prolonged Release Tablets IP were counted totaling 650 strips, each leaf containing 10 intoxicant Tablets totaling 6500 intoxicant Tablets AND CORLIVIDOL-100 SR T Prolonged Release Tablets were counted to a total of 1850 Strips, each strip contains 10 intoxicant tablets, making a total of 18,500 intoxicant tablets. Batch number of each strip but deliberately blacked out with black permanent marker. That the recovered 6500

intoxicant tablets make TRAMWEL SR 100 Tramadol Prolonged Release Tablets IP and 18,500 intoxicant tablets make CORLIVIDOL- 100 SR Tramadol Prolonged Release Tablets were separately packed in two separate plastic bags after preparing parcel. I/ASI sealed the same with my seal KSS and worthy DSP sealed it with his seal KSS and sample seal was prepared separately. I/ASI handed over the seal to SI Deepak Singh after use and worthy DSP kept his seal with him after use. The two parcels of the recovered Intoxicant tablets along with cardboard box were seized to police custody as proof through recovery memo. The driver and witnesses put their signatures on memo and worthy DSP attested the nemo. The accused Shaqib has committed an offence under Section 22-61-85 of NDPS Act and Section 201 of IPC by keeping under his possession the intoxicant tablets and by covering the batch Number with Black Marker in order to destroy its identity. On this after writing present Ruqa, the same is being sent through CT Amritpal Singh 2143 to the Police Station for registration of case. Case be registered and FIR number be informed. Control Room be informed. After issuing Special reports, the same be sent before senior officers. I/ASI along with fellow employees are busy in investigation at the spot. In the area of near Christian School, Mohali to Kharar Road. Time 01:00 PM. Lat: 30.74849, Lon: 76.64465. sd/- Harbhej Singh ASI CIA Staff. District SAS Nagar dated 03.12.2023. Mb.98557-44144. On receipt of Ruqa after registration of above case under above offence against the above, compilation of file was completed.”

4. A perusal of the above FIR make revelations that the petitioner is one of the main accused, who is involved in the active business of smuggling of huge quantity of Intoxicant tablets from the State of U.P. to the State of Punjab. This infact is the third transaction, which was intercepted by the police on suspicion and the recovery

which is effected in the present case is of huge intoxicant tablets i.e. 25,000/- tablets, which fall within the ambit of commercial quantity. The Hon'ble Supreme Court in “*The State of Haryana vs Samarth Kumar*,” **2022 LiveLaw (SC) 622**, has categorically held that the issue of the admissibility of the disclosure statement of the co-accused can be examined at the time of granting regular bail and not at the time of granting anticipatory bail. The relevant paragraphs read as under:-

“7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.”

5. In view of the above, the instant petition is hereby **dismissed**.

March 13, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No