

2024:PHHC:057574

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

101

CRM-M-22475-2018
Date of Decision : April 29, 2024

SUKHMINDER SINGH @ SUKHVINDER SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Aditya Sanghi, Advocate for the petitioner.
Mr. Bhupender Singh, DAG, Haryana.
Mr. Rajiv Sharma, Advocate for respondent No.2.

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.66/17 dated 11.10.2017, under Sections 8/15/18/29/60 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. In the asking for the relief of anticipatory bail, the learned counsel for the petitioner submits that it is a case where the petitioner was neither found at the spot, nor any recovery was effected from him. It is a case set up by the investigating agency on the basis of a disclosure statement, which cannot be relied against the present petitioner. He further submits that the truck involved in the instant crime, does not belong to the petitioner and there is nothing on record to connect the present petitioner with the commission of crime. He further submits that the petitioner has been enjoying the relief of pre-arrest bail since 2018 and there is nothing adverse on record that he has misused the concession

of pre-arrest bail. He further submits that in other two similar cases, in which the petitioner was involved, he has been acquitted in one of the case, prior to the registration of instant FIR and in other case, he has also earned acquittal during the pendency of the instant petition, therefore, he has infact clean antecedents.

3. This Court after considering the above facts, has granted the relief of pre-arrest bail to the petitioner vide order dated 24.5.2018 and from that day, the matter has been adjourned on one occasion or the other.

4. A detailed reply on behalf of the respondent through Investigating Officer, NCB, Chandigarh has been filed. Before this Court refer to the reply of the NCB, it is apt to deal with the facts of the present matter, which have been culled out from reading of the FIR:-

“On 9.10.2017, a secret information was received by IO Rajan Kumar from reliable sources that “one person namely Parghat Singh s/o Gurcharan Singh, r/o Mallekan, Sirsa, Haryana is dealing in trafficking of huge quantity of Opium and he has reached Ellenabad (H.R.) on 11.10.2017 through Nohar-Ellanabad Road between 0200 Hrs. to 0400 Hrs. and he is carrying Opium in his truck bearing no. HR-47-A-6097. The said secret information was reduced into writing by Rajan Kumar IO and submitted the same to Kuldeep Sharma, Superintendent, NCB, Chandigarh Zonal Unit. That on 11.10.2017 the NCB team was constituted by Kuldeep Sharma, Superintendent, NCB Chandigarh comprising of Intelligence officer Rajan Kumar, 1.0. Shailendra Prasad Avdesh Kumar (1.0) and Amit Kumar (Sepoy) for taking

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legal action on the secret information. The said team reached Ellenabad at 0115 hrs and laid naka at Shri Ram Dharam Kanta, Ellenabad, Sirsa, Haryana. As per the information at around 0315 Hrs a truck was noticed coming from Nohar Side which was signaled by hand to stop and it was found that the truck was bearing Reg No-HR-47A-6097 which was matching with the secret information. The truck driver stopped the truck on the side of the road there. Then Rajan Kumar 1.0. introduced himself and the team members of the NCB team to him and enquired about the identity of the person sitting on the driving seat of the truck on which the driver introduced himself as Parghat Singh S/o Gurcharan Singh R/o Mallekan, Sirsa which was matching with the secret information. Then it was told to truck driver Parghat Singh by the Rajan Kumar 1.0. that he has a secret information that you are carrying a consignment of illegal Opium in your truck, on which the truck driver Parghat Singh agreed that there is illegal Opium in his truck. Thereafter Rajan Kumar informed Ellenabad Police station on mobile number 8814011644 and requested for sending police team on the spot. After some time Hanumant Singh, S.I. reached at the spot with the police team. The NCB team thereafter consulting with the Police team about the lack of facility on the spot decided to take the truck and the truck driver to PS-Ellenabad. Before this the NCB team had tried hard to associate independent witness after laying Naka but because of odd hours during night no witness could be associated there. The first Panchnama was concluded on the spot at around 0350 Hrs on which Shailendra Prasad, 1.0, Avdesh Kumar, 1.0, and Amit Kumar, Sepoy put

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their-signatures along with the accused Pargat Singh. Thereafter Pargat Singh and the truck were taken to the Police Station, whereon search of the truck, opium weighing 15.128 kgs and poppy husk weighing 1.890 kgs was recovered.”

5. From reading the above, it is crystal clear that from co-accused Pargat Singh, huge contraband i.e. 15.128 kgs of opium and 1.890 kgs of poppy straw was recovered. There is no dispute that the petitioner is not named in the FIR and no recovery has been effected from him, however, the Officers of the NCB, have recorded the disclosure statement of the co-accused Pargat Singh, wherein, he specifically disclosed that out of the alleged recovered contraband, 5 kgs was meant for the present petitioner.

6. The reply further reflects that the petitioner did join the investigation in pursuance of the order passed by this Court, however, he under the protection granted by this Court did not co-operate and rather try to mislead the investigating agency. The petitioner during investigation put up a specific defence that , as put up by the petitioner that on the date of occurrence i.e. 11.10.2017, he had visited Amandeep Hospital, Amritsar, which was subsequently verified by the NCB and the defence was found to be false. It seems that the petitioner is infact, under the garb of the protection as granted by this Court is not only misleading the investigating agency but also scuttle the investigation process.

7. Learned counsel for respondent No.2, on instructions imparted to him by Mr. Sumit Saini, Intelligence Officer, NCB, submits

that because of non cooperation of the petitioner, till date, the final report could not be submitted, whereas, the final report qua other co-accused Pargat Singh has already been submitted way back in the year 2018 and the trial is progressing *qua* him.

8. From the record, it is also transpired that the petitioner is involved in two more cases, though the petitioner earned acquittal in those matters, but considering the fact that heavy contraband has been recovered from the co-accused, which falls within the ambit of commercial quantity and there are enough evidence collected by the investigating agency to connect the present petitioner with the main co-accused Pargat Singh, as well as the antecedents of the present petitioner, this Court does not find the present case to be a case of pre-arrest bail.

9. The submission as made by the learned counsel for the petitioner that the disclosure statement of the co-accused is not an admissible in evidence, would be considered by the learned trial Court concerned at its appropriate stage especially in view of Section 67 of the Narcotic Drugs and Psychotropic Substances Act. At this stage, this Court refrains to make any observation in this regard. However, for the purpose of anticipatory bail, this submission as made by the learned counsel for the petitioner cannot be accepted and for this observation, this Court gets strength from the law laid down by the Hon'ble Supreme Court in the case of **State of Haryana Vs. Samarth Kumar, 202(3) RCR (Crl.) 991**. The relevant extract reads as under:-

“4. The High Court decided to grant pre-arrest bail

*to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in **Tofan Singh v. State of Tamil Nadu reported in (2021) 4 SCC 1.***

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.

8. In view of the above,, the instant petition is **dismissed**. The petitioner is directed to surrender before the learned trial Court concerned within 20 days from today and thereafter the learned trial Court concerned would take action in accordance with law. In case the petitioner fails to surrender before the learned trial Court concerned within 20 days from today, the NCB concerned is free to take action in accordance with law.

(KULDEEP TIWARI)
JUDGE

April 29, 2024
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No