

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-16601-2024

Date of Decision:-19.04.2024

Lakbir Singh.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Ajay Singh, Advocate for the Petitioner.

Mr. Rajiv Goel, Deputy Advocate General, Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.135 dated 25.05.2023 under Sections 18(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Udyog Vihar, District Gurugram.

2. The brief facts of the case are that a courier company contacted the investigating agency that there was suspicion about the contents of a parcel. A raiding party was constituted and search of the parcel revealed that two boxes of Dabur Chawanprash were containing 422 grams and 420 grams of Opium each. The sender of the parcel was Lakhbir Singh (petitioner) and it was to be delivered to one Surinder Singh, resident of California, USA. Thereafter the instant FIR came to be registered.

3. During the course of investigation it transpired that mobile number 7657994875 which was mentioned on the parcel stood registered in

the name of Nishan Singh son of Rasal Singh, the brother of the petitioner.

4. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. There was absolutely no evidence that the petitioner had committed the offence in question. The mobile number on the parcel belonged to a relative and not the petitioner. As the petitioner was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

5. The Counsel for the State on the other hand has filed reply dated 19.04.2024 by way of affidavit of Shiva Archan, HPS, Assistant Commissioner of Police, Udyog, Gurugram in the court today, which is taken on record. While referring the said reply, he contends that the parcel was found to have been despatched by Lakhbir Singh (petitioner) and the mobile phone number of the brother of the petitioner was found printed on the invoice. Thus, it was established beyond reasonable doubt that the petitioner had attempted to send the contraband to one Surinder Singh, resident of Bakersfield, USA. The custodial interrogation of the petitioner was certainly necessary to ascertain his modus operandi as also to obtain information regarding other transactions of a similar nature carried out by him. Therefore, the petitioner was not entitled to the concession of anticipatory bail.

6. I have heard learned Counsel for the parties.

7. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", has held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is

reproduced hereinbelow:-

“ It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail”.**

8. A perusal of the FIR and the investigation conducted so far would show that when the parcel was found to be suspicious and the investigating agency was called to examine the same, it was found to contain Opium. The sender was Lakhbir Singh (petitioner) and the mobile number

of the brother of the petitioner stands printed on the invoice. Therefore, *prima facie* the offence stands established. The custodial interrogation of the petitioner is necessary not only to know about earlier transactions carried out by him but also to ascertain the identify of Surinder Singh, resident of California. Therefore, the petitioner is not entitled to the concession of anticipatory bail.

9. In view of the above, I find no merit in the present petition and the same stands dismissed.

10. However, the observations made hereinabove are only for the purposes of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

April 19, 2024
Vinay

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