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2024:PHHC:054025

CRM-M-19544-2024
Date of decision : 22.04.2024
Petitioner

Versus

....Respondent

Present : Mr. Randeep S. Waraich (Rana), Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Apprehending his arrest in FIR No.0032 dated 05.04.2024, registered for offences punishable under Sections 18 of the NDPS Act, 1985 at Police Station City 2 Abohar, District Fazilka, the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. As per the case of the prosecution one Sonu Kumar son of Diwan Chand was apprehended in FIR No.31 of 2024 registered for offence punishable under Section 61 of the Excise Act, at Police Station City Abohar. Sonu Kumar suffered a disclosure nominating the present petitioner as the source of illicit liquor. It is further claimed by the prosecution that while the police party went to apprehend the present petitioner and reached near the area of his residence, they saw him standing on a motorcycle with a bag on the petrol tank of the motor-cycle. When the accused Sonu Kumar pointed towards the present petitioner, he fled away from the spot riding motorcycle. However, in the process bag that the petitioner was carrying

fallen on the ground. On checking, following contents from the bags were recovered:

1. 2 kg of opium
2. Voter ID card.
3. Scanned Copy of Adhaar Card.
4. PAN Card and debit card.

3. Ld. Counsel for the petitioner submits that its a planted case. Also the house of the petitioner was raided and all the aforesaid documents were taken by the police party in their possession. He further submits that it is highly debatable that the petitioner can be attributed conscious possession of the opium which admittedly was recovered from a bag fallen on the ground and there is no description w.r.t. the motorcycle.

4. Per contra, Mr. Aggarwal who appears on advance notice submits that it is highly improbable that the police party can be said to have come in possession of PAN card, Voter Identity Card etc. to implant the case on the petitioner. It has been revealed during the investigation that the petitioner was in fact supplier of illicit liquor to Sonu Kumar and it was only when the police party went to apprehend the petitioner and he tried to run away, the bag he was carrying slipped and fallen on the ground which led to recovery of opium.

5. I have heard counsel for the parties and have gone through records of the case.

6. As per settled law laid down by Apex Court in **Gurbaksh Singh Sibbia vs. State of Punjab, 1980 (2) SCC 565**, reiterated in **Sushila**

Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5)

SCC 1 the Court while considering prayer for pre-arrest bail has to consider as to whether the accusation appears to be actuated by mala fides, nature of seriousness of the proposed charges, the role attributed to the applicant and the probabilities of securing presence of the applicant during the course of trial and as to whether there is any apprehension that the applicant will tamper with the witnesses or evidence.

7. It is the aforesaid considerations which need to be balanced by the Courts while considering grant of pre-arrest bail.

8. In view of above, this Court finds that at this stage it is not possible to ascertain whether the petitioner can be said to be in conscious possession of the contraband or not. However, keeping in view the allegations levelled, the nature of recovery effected and there being no reason for this Court to hold that the allegations levelled against the petitioner are punctuated by any *mala fide* intention on part of the prosecution, this Court does not find it to be a case for grant of pre-arrest bail.

9. Resultantly, the present petition is dismissed.

April 22, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No