

CRM-M-32882-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32882-2024
Reserved on: 08.08.2024
Pronounced on: 30.08.2024

Dheeraj Batta @ Dhiraj Batta ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Gaurav Datta, Advocate
for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
59	20.05.2024	Sirhind, District Fatehgarh Sahib, Punjab	22(c) of Act No.61 of 1985 (Sections 25/54/59 of Arms Act added later on)

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC, 1973, seeking anticipatory bail.
2. As per paragraph 14 of the reply the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offenses	Police Station
1	21	23.01.2009	323, 324, 326, 34, 506, 148, 149 IPC	Sadar Khanna
2	143	07.07.2009	399, 402 IPC	Mandi Gobindgarh
3	146	17.07.2009	25/54/59 of Arms Act	Mandi Gobindgarh
4	54	09.03.2009	307, 120-B IPC	Sadar Khanna
5	10	01.02.2010	307, 332, 232, 224, 225, 148, 149 IPC	Bhadson, District Patiala
6	02	05.01.2012	18, 25-61-85 NDPS Act	City Khanna
7	302	16.10.2013	307, 427, 148, 149 IPC and 25, 27-54-59 of Arms Act	Division No.05, Ludhiana
8	66	07.07.2014	323, 324, IPC	Sadar Nabha, District Patiala
9	135	09.05.2016	160 IPC	City Khanna
10	136	10.05.2016	25-54-59 of Arms Act	City Khanna
11	58	25.02.2018	25-54-59 of Arms Act	City Khanna
12	227	16.10.2013	307, 336, 452, 506, 148, 149 IPC	City Khanna
13	20	06.02.2020	25-54-59 of Arms Act	City-2, Khanna
14	134	25.08.2022	392, 379-B, 120-B IPC and	City-I, Khanna

			25-54-59 of Arms Act	
15	300	23.11.2018	323, 342, 506, 427, 148, 149 IPC	Sohana, District Mohali
16	95	10.05.2023	323, 324, 506, 34 IPC	Mandi Gobindgarh

3. However, the petitioner’s counsel argued that now only three cases are pending and the petitioner has been acquitted in the remaining cases.

4. Facts of the case are being taken from reply dated 04.08.2024, which reads as follows:-

“3. That with regard to the subject matter of the present petition, it is submitted that case/FIR No. 59 dated 20.05.2024 under Section 22 of NDPS Act along with police party was present at the service road, T Point, Tarkhanmajra, Sirhind for patrolling and checking of suspicious persons and then at about 06:30 PM, a silver-colored Swift car with registration No. PB-65-H-7989 was spotted coming from the Sirhind side, driven by a person with a haircut. Based on suspicion, the car was stopped, and the driver was inquired about his name and whereabouts, who disclosed his name as Amit Sharda.

4. That thereafter, SI Amarjit Singh apprised about his rank and posting to the accused Amit Sharda and while raising suspicion of the presence of some intoxicant substances with him, he was asked to get his search as well as the search of the said car conducted. It is relevant to mention here that the provisions of Section 50 NDPS Act were duly complied with and the accused Amit Sharda was duly apprised about his legal right that he could get his search conducted from a Gazetted Officer or Magistrate, who can be called at the spot or he can be taken to them, upon which, the accused Amit Sharda reposed faith in the SI Amarjit Singh and consented for search. Accordingly, the consent memo was prepared, which was signed by the accused Amit Sharda. Efforts, were made to join the private witnesses but everyone cited their reluctance. SI Amarjit Singh presented himself and police party along with the government vehicle for search to the accused Amit Sharda who stated that he do want to search the police officials and police vehicle.

5. That thereafter, during the search of the said car, from the dashboard, 23 injections of Pentazocine Lactate Injection IP 30 mg PENZINE make Batch No. P23L187, MFG DATE 08/2023, EXP DATE 07/2025 and one cardboard box containing 23 vials of Pheniramine Maleate Injection IP. AVIL 10 ML make Batch No. 2122088, MFG DATE MAR.2022, EXP. DATE FEB.2025 were recovered, for which the accused Amit Sharda could not produce any permit of license. Since, the accused Amit Sharda was found in the conscious possession of 23 injections of Pentazocine Lactate Injection IP 30 mg PENZINE and 23 vials of Pheniramine Maleate Injection IP. AVIL 10 ML, he was found to have committed the offence under 22CNDPS Act. Accordingly, ruqa was sent for registration of FIR and consequently, case/FIR No.59 (supra) was registered.

x x x x x

7. That thereafter on 23.05.2024, during interrogation, the accused Amit Sharda disclosed that, in addition to selling intoxicating substances (heroin), intoxicating injections, and vials, he also supplies and sells illegal arms and weapons, which he obtains from the states of Madhya Pradesh and Uttarakhand. The accused Amit Sharda further disclosed that he had provided one 32 bore magazine pistol along with six live cartridges to Karnal Singh and one 32 bore magazine pistol along with six live cartridges to Dheeraj Batta (the petitioner) for the purpose of further sale. Thereafter on 23.05.2024, the accused Amit Sharda was again produced before the Ld. Court and his police remand was obtained for one day. On 24.05.2024, the accused Amit Sharda was again produced before the Ld. Court and his police remand was further extended for 3 days. Based on the interrogation of accused Amit Sharda, Karnail Singh @ Kelly and Dheeraj Batta (petitioner) were nominated as accused in the present case/FIR No. 59 (supra) and the offence u/s 25 of Arms Act was added into the array of offences of the present case/FIR No. 59 (supra) vide Case Diary No. 5 dated 24.05.2024, the same being made out. DDR No. 33 dated 24.05.2024.

8. That thereafter on 24.05.2024, based on the secret information of the secret informer, the accused Karnail Singh @ Kelly was arrested in the present case/FIR No. 59 (supra), produced before the Ld. Court on 25.05.2024 and his police remand was obtained for 3 days. During interrogation, the accused Karnail Singh @ Kelly suffered his disclosure statement u/s 27 of the Indian Evidence Act and in pursuance thereof got recovered .32 bore pistol along with magazine, which was taken into police possession, in accordance with law.

9. That thereafter on 26.05.2024, during interrogation, the accused Amit Sharma suffered his disclosure statement u/s 27 of the Indian Evidence Act that he used to make phone calls, chat from different apps, and share photos with accused Karnail Singh @ Kelly and Dheeraj Batta (petitioner) through his mobile phone, a Samsung Galaxy A22, color black, carrying SIM number 96464-26172. In pursuance of the disclosure statement, the accused Amit Sharma got the said mobile phone recovered from his house. Thereafter on 27.05.2024, the accused Amit Sharda and Karnail Singh @ Kelly were produced before the Ld. Court wherein, they were sent to the judicial remand by the Ld. Court.”

5. The petitioner's counsel submitted that the FIR against the petitioner is solely based on disclosure statement of Amit Sharda, which the petitioner argues is not valid evidence under Section 27 of the Indian Evidence Act. It is also submitted that petitioner asserts innocence, highlighting the absence of evidence like intent, participation or technical proof connecting him to the alleged crime. The petitioner cites Sections 25 & 26 of the Indian Evidence Act, arguing that confessions made to police officers during an investigation cannot be used against the accused. Counsel also submitted that petitioner's name surfaced only during investigation and there is no direct evidence linking him to the crime and only three cases are now pending against him and in rest of the cases, petitioner has been acquitted.

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6. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.
7. The State opposes the bail.
8. There is sufficient preliminary evidence pointing towards the petitioner's participation. The investigation is ongoing, and qua the petitioner is at the initial stage. Furthermore, the petitioner has three pending cases against him, indicating a criminal mindset.
9. A perusal of the bail petition and the attached documents prima facie points towards the petitioner's involvement but does not make out a case for bail. Any further discussions will likely prejudice the petitioner; this court refrains from doing so.
10. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.
11. **Petition dismissed.** Interim orders, if any, are recalled with immediate effect. All pending applications, if any, are disposed of.

(ANOOP CHITKARA)
JUDGE

30.08.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: No.