

IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH

CRM-M-777-2024
Reserved on: 18.01.2024
Pronounced on: 23.01.2024

Jashandeep Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. A.S. Brar, Advocate
for the petitioner.

Mr. Ravinder Singh, A.A.G., Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
135	20.07.2023	City South, District Moga	21, 22 and 29 of NDPS Act (Section 7, 13 of PC Act added later on)

1. The petitioner, apprehending arrest in the FIR captioned above has come up before this Court under Section 438 CrPC seeking anticipatory bail by filing second bail application. Counsel for the petitioner clarify that first petition was withdrawn with liberty to file fresh due to technical defect.

2. According to counsel for the petitioner, the accused has the following criminal antecedents:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	261	19.12.2019	21 of NDPS Act	City South Moga
2.	92	22.04.2018	22 of NDPS Act	City South Moga
3.	147	08.07.2018	304 IPC	City Moga
4.	123	29.07.2015	22 of NDPS Act	City South Moga
5.	40	24.02.2022	21/29 of NDPS Act	City South Moga

3. Vide order dated 09.01.2024, this Court had issued notice and had not granted any interim stay.

4. Facts of the case are being taken from reply dated 16.01.2024 filed by concerned DySP which reads as follows:

“Prosecution case is that on 20.07.2023 a police party headed by ASI Tarsem Singh of CIA Staff, Moga was present at Bahona Chowk, Moga in connection with patrolling and checking of suspected persons then

special informer came there and informed that Kirandeep Kaur @ Kirna wife of Gurpreet Singh, Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldip Singh used to sell intoxicating tablets and Heroin and in case raid is conducted then they can be apprehended red handed and from their possession huge quantity of heroin and intoxicant tablets can be recovered. On the basis of said information ASI Tarsem Singh sent ruqa to the police station and got registered the present case. On receiving the information another police party headed by ASI Sukhwinder Singh reached at the spot and apprehended said Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldip Singh and recovered 5 grams heroin and 130 Etizolam tablets from their possession.”

5. Counsel for the petitioner seeks bail on the ground that the evidence collected is in the shape of disclosure statement which is inadmissible in law. He further submits that the prosecution is fishing the evidence which is impermissible in criminal law. In addition to that, there was no recovery from the petitioner and it is a witch hunt. Counsel for the petitioner also submits that there is no legally admissible evidence and he is entitled to bail.

6. State refers to reply filed by DySP dated 16.01.2024, para no.12 of which reads as under:-

“During investigation of the case, said Kirandeep Kaur @ Kirna wife of Gurpreet Singh and Jasvir Kaur @ Jassi wife of Baljit Singh @ Mintu and Baljit Singh @ Mintu son of Kuldip Singh, got recorded their disclosure statement that they had purchased said 130 intoxicant tablets and 5 grams heroin from Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali, Jashandeep Singh @ Kali (Petitioner) son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga as per instigation of Parkash Singh son of Harbhajan Singh resident of Shri Guru Chander Nagar, Moga. On the basis of said disclosure statement said Karamjit Singh @ Sahil son of Kulvir Singh, Sona wife of Pawan Kumar, Kalu residents of Sadhan Wali, Jashandeep Singh @ Kali (Petitioner) son of Raja Singh, Amarjit Singh resident of Chowk Shekhan, Moga and Parkash Singh were nominated as accused and offence u/s 29 of NDPS Act was added vide DDR No.31 Dated 21.07.2023.”

7. Based on the said reply, State counsel submits that they need custodial interrogation of the petitioner and he is not entitled to bail. State Counsel also refers to judgment of Hon’ble Supreme Court passed in case **State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991**, wherein Hon’ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. 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.

8. An analysis of the pleadings and arguments addressed by counsel for the parties would lead to following outcome. The police had recovered commercial quantity of Etizolam along with small quantity of Heroin from co-accused which was purchased by them from the petitioner and co-accused. There is sufficient *prima facie* evidence collected by the Investigator against him. In addition to that, the investigation reveals that the petitioner was the supplier of the contraband and he is part of the drug racket. In the entirety of facts and circumstances and the fact that similar placed co-accused Karamjit Singh and Amarjit Singh were arrested, the case of the petitioner is on similar footing. There is sufficient *prima facie* evidence that the petitioner along with co-accused had sold commercial quantity of Etizolam to Kirandeep Kaur, Jasvir Kaur and Baljit Singh. Custodial interrogation of the petitioner is required to find out respective quantity which have been given to these people independently or jointly. Petitioner's custodial interrogation is required to unearth the persons from whom the petitioner and his co-accused had purchased the drugs. Further the petitioner has failed to satisfy rigor of Section 37 of NDPS Act and is not entitled to bail.

9. Given the nature of allegations, custodial interrogation is required. An analysis of the allegations and evidence collected does not warrant the grant of bail to the petitioner.

10. In Sumitha Pradeep v Arun Kumar CK, 2022 SCC OnLine SC 1529, Supreme Court holds,

[16]. ... 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 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 anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

11. In State of Gujarat v. Mohanlal Jitmalji Porwal (1987) 2 SCC 364, Supreme Court holds,

[5].The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

12. In State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, Supreme Court holds,

[6]. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

13. In Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305].

14. In Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, Supreme Court holds,

[34]. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

[35]. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

15. In P. Chidambaram v. Directorate of Enforcement, 2019 9 SCC 24, Supreme Court holds,

[70]. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C., 1973 is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

16. In Central Bureau of Investigation v. Santosh Karnani, Cr.A 1148 of 2023, dated 17-04- 2023, Supreme Court, in an FIR registered under sections under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988, holds,

[24]. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

[31]. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority." Hence, the need to be extra conscious.

17. In the background of the allegations and the light of the judicial precedents mentioned above in the facts and circumstances peculiar to this case, the petitioner fails to make a case for anticipatory bail.

18. Any observation made hereinabove is neither an expression of opinion on the case's merits, neither the court taking up regular bail nor the trial Court shall advert to these comments.

Petition dismissed. Interim orders, if any, stand vacated. All pending applications, if any, also stand disposed.

(ANOOP CHITKARA)
JUDGE

23.01.2024
Jyoti Sharma

Whether speaking/reasoned:	Yes
Whether reportable:	No.