



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

103

CRM-M-63022-2024
DATE OF DECISION: 16.12.2024

RANJEET SINGH

.....PETITIONER

Versus

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ramandeep Kaur, Advocate for
Mr. Monty Goyal, Advocate for the petitioner(s).

Mr. B.S. Virk, Sr. DAG, Punjab

SANDEEP MOUDGIL, J

1. Relief Sought

The jurisdiction of this Court under Section 482 BNSS, 2023, has been invoked seeking anticipatory bail to the present petitioner in FIR No. 976, dated 23.11.2024, under Sections 21(b) of NDPS Act registered at Police Station Sadar Hisar, District Hisar.

2. Facts

“To, Station House Officer, Police Station Sadar Hisar, Jai Hind. Today on 23.11.2024, myself ASI Hemraj No. 1703/RTK, Haryana State Narcotics Control Bureau Unit Hisar, along with his colleagues ESI Balwant Singh No. 498/ Sirsa, EHC Bazir No. 874/Hansi in a Government Vehicle bearing No. HR 05GV 5957 brand Scorpio Driver HC Vikrant No. 218/Hisar for the prevention of Narcotics Crime was present at Bagla Road, Hisar nea Piranwali Mod, when a special informer met and informed that Mahender Singh alias Bittu, son of Bajir Singh, resident of village Piranwali,



District Hisar, is standing outside his house with Heroin. If an immediate raid is conducted, the above mentioned Mahender Singh alias Bittu can be controlled along with the narcotics substance Heroin. When the information was confirmed and reliable, myself ASI informed my fellow co-officials about the information. The information was sent to higher authorities as per rules by preparing a report under section 42 NDPS Act and sent through EHC Bazir No. 874/Hansi at Police Station Sadar Hisar for information. After that, myself ASI along with fellow employees in a govt. vehicle left for the place as told by the special informant and reached the house of Mahender Singh alias Bittu. Then a boy wearing black lower and green T-shirt was seen standing in the street outside a house. On seeing the police party, he started entering the house, then myself ASI controlled him with the help of fellow employees and asked his name and address. He revealed his name as Mahender Singh alias Bittu, son of Bazir Singh, resident of village Piranwali, district Hisar. Thereafter, on the confirmed information of the presence of narcotic substances in the possession of Mahender Singh alias Bittu, myself ASI issued a notice under section 50 of the NDPS Act and said that "I, ASI Hemraj No. 1703/RTK, am posted as an investigating officer in the Haryana State Narcotics Control Bureau Unit, Hisar. I have given complete introduction of myself and my team to you Mahender Singh alias Bittu, son of Bajir Singh, resident of village Piranwali, district Hisar. I have received information that you have narcotic substances in your possession. You have the legal right regarding search that if you want your search to be done in the presence of a Gazetted Officer or the nearest Magistrate, then they can be called on the spot or you can be presented before them. The notice has been read out and explained to you. You should be informed about the notice and tell your wish. Notice under Section 50 NDPS Act was prepared. Accused Mahender Singh alias Bittu affixed his left hand thumb impression and the witnesses appended their respective signatures. After that, the above mentioned accused Mahender Singh alias Bittu, after thinking for some time, recorded his reply in notice under Section 50 NDPS Act that "I Mahender Singh alias Bittu son of Bajir Singh, resident of village Piranwali, district Hisar. You ASI Hemraj No. 1703/RTK Haryana State Narcotics Control Bureau Unit Hisar have shown me your police ID card and given me complete introduction of yourself and your team. I have understood the notice given by you under Section 50 NDPS Act very well. I want my search to be done on the spot in the presence of a Gazetted Officer. You should call a Gazetted Officer on the spot. I have scribed my reply notice to you. You have read out the reply notice to me and explained it to me. The reply notice under Section 50 NDPS Act was prepared. On which accused

Mahender Singh alias Bittu affixed his left hand thumb impression and the witnesses appended their respective signatures. After that at around 11:45 AM, as per the list of Gazetted Officers in relation to NDPS issued by Deputy Commissioner Hisar, myself ASI contacted Gazetted Officer Sh. Anshuman Thakral Excise and Taxation Officer Office DETC (ST) Hisar on mobile number 9812600449 from my mobile number 8708046211 but he did not pick up the phone. After that, when we contacted Mr. Rakesh Malik Tehsildar Hisar on his mobile number 89013202203, we could not get be able to connect. We tried to contact both of them many times but could not get connect. Then at about 12:13 PM I contacted Gazetted Officer Sh. Baru Singh, Excise and Taxation Officer, Office of DETC (ST) Hisar on Mobile No. 9818736517 from my Mobile No. 8708046211 and informed him about the circumstances and requested him to come to the spot, who told that he was reaching the spot. After waiting, for about 12:55 PM Gazetted Officer Sh. Baru Singh, Excise and Taxation Officer, Office of DETC (ST) Hisar reached on the spot, to whom myself ASI informed him about the circumstances and presented the notice and reply notice under Section 50 of NDPS Act. Gazetted Officer Sh. Baru Singh ETO saw the notice and reply notice under Section 50 of NDPS Act. Sh. Baru Singh ETO interrogated the accused Mahender Singh alias Bittu. Myself ASI handed over my mobile phone to HC Vikrant No. 218/Hisar and started videography at 01:06 PM. Myself ASI made an offer to search me in front of Gazetted Officer Sh. Baru Singh ETO. Who searched me himself. During the search, no narcotic substance or illegal item was found from me, so a search offer and personal recovery report was prepared. On memo, accused Mahender Singh alias Bittu affixed his left hand thumb impression and the witnesses appended their signature and the Gazetted Officer Sh. Baru Singh ETO verified the memo of search offer. After that, in his presence Sh. Baru Singh ETO instructed myself ASI to search the above mentioned accused Mahender Singh alias Bittu as per the rules. On which myself ASI first searched the above mentioned accused Mahender Singh alias Bittu and then I found a transparent polythene in the right pocket of the black coloured lower worn by accused Mahender Singh alias Bittu. When the same was checked, the narcotic substance heroin was recovered from it. And the recovered heroin along with the transparent polythene was weighed with the computer weighing scale, the total weight of the recovered heroin along with the transparent waxy polythene was found to be 06.02 grams. The recovered heroin along with the waxy polythene was put into a cloth parcel and a separate parcel was prepared. Then myself ASI stamped the parcel of narcotic substance heroin along with the sample seal with my copper smap embossed seal

initials HR/3. After that Gazetted Officer Sh. Baru Singh ETO stamped the parcel of narcotic substance Heroin along with sample seal with his silver ring raised seal initials SS/1 and kept the seal with himself after use. I handed over the seal and sample seal to ESI Balwant Singh No. 498/Sirsa for later use. The parcel of narcotic substance Heroin total weight 06.02 grams with sample seal HR/3, ss/1 along with sample seal was taken into police custody as evidence through property seizure memo. On the property seizure memo, accused Mahender Singh alias Bittu affixed his left hand thumb impression and witnesses appended their respective signatures. Sh. Baru Singh ETO also verified the parcel of narcotic substance Heroin, sample seal and property seizure memo. During the entire proceedings, the general public was asked to join in the proceedings. But all of them expressed their compulsion and left the spot without disclosing their names and addresses. On interrogation, accused Mahender Singh alias Bittu told that I had bought the Heroin from Ranjeet alias Ranu son of Lalu Wali of village Piranwali, district Hisar, Since the above mentioned accused Mahender Singh alias Bittu has committed the crime under section 21B-61-85 NDPS Act by keeping 06.02 stan of narcotic substance Heroin in his illegal possession, for which a complaint is being sent to Police Station Sadar Hisar through ESI Balwant Singh No. 498/Sirsa. After registration of case, its case number should be informed. For further investigation, another investigating officer should be sent to the spot. Myself SI along with fellow employees, with the above mentioned accused Mahender Singh alias Bittu along with the case property is present at the spot.”

3. Contentions

On behalf of the petitioner

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case has been nominated as an accused, only on the disclosure statement of the co-accused namely Mahender Singh @Bittu from whom the alleged recovery of 6.02 gm of Heroin has been affected. The Learned counsel also submits that the present petitioner has been attributed no specific role and no recovery has been effected from the present petitioner. There is no evidence with the prosecution to connect him with the

crime in question. Nothing is to be recovered from the petitioner, who is ready and willing to join the investigation.

Notice of motion.

On behalf of the respondent/State

Mr. B.S. Virk, Sr. DAG, Haryana, appearing on advance notice, accepts the same on behalf of respondent/State, who prays for dismissal of the present petition stating that the name of the petitioner has been specifically disclosed by the Co-accused Mahender Singh @ Bittu as the supplier. The petitioner and his co-accused are accused of committing a crime which cripples the society and also corrupts the sacred thread of society. Custodial interrogation of the petitioner is required to ascertain the factual position of the present case.

4. **Analysis**

In case of criminal investigation, the normal procedure prescribed for curtailing the right to life & liberty, is that the investigating officer can arrest the accused even without warrant. The Court has extraordinary power to protect an innocent person. However, this power has to be exercised by the Courts with due circumspection.

The Hon'ble Supreme Court in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Live Law (SC) 870*** 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 here-in-below:-

“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.”

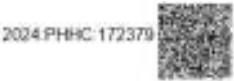
More so, investigation is still going on in the present case. It is settled proposition of law that power exercisable under Section 438 Cr.P.C., is somewhat extraordinary in character and it is to be exercised in exceptional

cases. The Supreme Court in “State vs. Anil Sharma”;(1997) 7 SCC 187, held as under:-

“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 a suspected person is of tremendous advantage in disinterring many useful informations and also material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is 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 needs 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 a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

5. Conclusion

In the instant case, the investigation has prima facie established that the co-accused from whom the recovery of 6.02 gm of Heroin has been effected has named the present petitioner to be the supplier of the alleged contraband, therefore the custodial interrogation is required to ascertain the allegations made against the petitioner. Even otherwise, the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioner is certainly required. Therefore, the petitioner is not entitled to the grant of anticipatory bail.



6. Decision

The present petition stands, dismissed in aforesaid terms.

However, it is made clear that the observations in this order are only for the purposes of deciding this bail application and the trial Court is free to adjudicate upon the matter in accordance with law.

16.12.2024
Poonam Negii/anuradha

(Sandeep Moudgil)
Judge

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No