

2025:PHHC:059752



104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24391-2025
Date of Decision: 06.05.2025

Sandeep Kumar ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Naresh Jain, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Addl. AG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

1. Prayer in the present petition is for grant of anticipatory bail to the petitioner in a case FIR No.60 dated 06.06.2022 under Sections 18(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Bahavwala, District Fazilka, Punjab (Annexure P-1).

2. Succinctly facts of the case are that on 06.06.2022, while the police party was on patrolling and a *nakabandi* was laid and during which police party saw one car Santro bearing registration No.RJ-148C-1249 of silver colour coming from the Rajasthan side. It was signalled to be stopped, however, driver of the car got perplexed and tried to take u-turn. But the police party succeeded in stopping it. The driver of the car disclosed his name as Moti Ram/Moti Lal. He was suspected to be carrying some intoxicant material and thus, he was given offer to be searched. On checking, a black colour bag was found lying in between the front seats of the car. On checking, the same was found to be containing opium. On weighing the same, it was found to be 07 kg.

of opium. The said Moti Ram/Moti Lal failed to produce any licence regarding possession of the same. Thus, the FIR was registered and he was arrested on the spot. On registration of the FIR, investigation commenced. The samples taken were sent to the FSL lab. During investigation, the complicity of the petitioner surfaced in the present case and thus, he was also arrayed as an accused. Apprehending arrest, he approached the learned Special Court, Fazilka for grant of anticipatory bail. However, after hearing both the sides, learned Special Court declined the same vide order dated 25.04.2025 (Annexure P-3). Hence, aggrieved from the same, he approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. Neither petitioner was arrested at the spot nor there was any recovery effected from the petitioner. It is submitted that name of the petitioner has been arrayed as an accused on the basis of disclosure statement of co-accused Moti Ram/Moti Lal, from whom 07 Kg. of opium allegedly was recovered. He further submits that the disclosure statement of the co-accused itself is not admissible as an evidence and thus, false implication of the petitioner is evident. He further submits that the co-accused have been granted regular bail and thus, in the facts and circumstances the petitioner also deserves to be granted anticipatory bail.

4. Learned State counsel, however, has opposed the submissions made by the learned counsel for the petitioner. He submits that during investigation it has been found that out of the recovered 07 kg. opium from the co-accused, the petitioner has supplied 01 kg. of opium. He submits that the payment of Rs.40,000/- had also been found to have been made in the account

of his wife. He submits that the recovered contraband falls under the category of commercial quantity and Section 37 of the NDPS Act was attracted. He, thus, submits that no case for grant of anticipatory bail is made out in favour of the petitioner. He submits that the petition is devoid of any merit and the same deserves to be dismissed.

5. Heard.

6. On hearing the learned counsel for the parties and from the perusal of the record it is deciphered that the present case pertains to the recovery of commercial quantity of 07 kg. opium. During investigation, *prima facie* the complicity of the petitioner has been found wherein he has allegedly supplied 01 kg. opium to the co-accused, from whom 07 kg. opium was recovered. The transaction of Rs.40,000/- is also said to have been found by the investigating agency in the account of the wife of the petitioner. Needless to say that the investigation is at threshold. Thus, the submissions made by the learned counsel for the petitioner regarding his involvement on the basis of the disclosure statement cannot be appreciated at this stage when the investigation is at the initial stage.

7. For the consideration of anticipatory bail, the statutory parameters are given under Section 482 (1) & (2) of BNSS which reads as under:-

482“Direction for grant of bail to person apprehending arrest:

1. When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

2. When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
- (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
- (iii) a condition that the person shall not leave India without the previous permission of the Court;
- (iv) such other condition as may be imposed under sub-section (3) of section 480, as if the bail were granted under that section.”

8. The Hon'ble Supreme Court in State represented by ***CBI Vs. Anil Sharma, (1997) 7 SCC 187*** has held as under:-

“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 favorable order under Section 438 if 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.”

9. The Hon'ble Apex Court in plethora of judicial precedents including ***Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632***, has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of his fleeing from

justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary discretion which should be exercised in the extraordinary circumstances.

10. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been *prima facie* established. The investigation is at its threshold. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

11. In view of the facts and circumstances of the present case, this Court is of the opinion that the petitioner does not qualify for exercising the extraordinary power by this Court in his favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

12. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

06.05.2025
Parveen kumar

(RAJESH BHARDWAJ)
JUDGE

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