

(2022) 08 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 44368 Of 2020

Kuljit Singh

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 26-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 15, 21, 22, 37, 61, 85

Citation : (2022) 08 P&H CK 0110

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Keshav Pratap Singh, Dhruv Dayal

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

FIR No.

Dated

Police Station

Sections

64

13.12.2020

GRP Amritsar, Distt. Amritsar

409, 120-B IPC and 59 of Narcotic Drugs and Psychotropic Substances Act

1. The petitioner, who at that time was in-charge of the Malkhana of the concerned police station, has been arraigned as accused along with SHO on the allegations of taking away the contrabands from the malkhana and now

apprehending arrest for violating the provisions mentioned above of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act) per the FIR captioned above had come up before this Court under Section 438 CrPC seeking anticipatory bail.

2. In paragraph 20 of the bail petition, the accused declares that he has one case of misappropriation, but that is part of the same time period.

3. While interrogating an accused caught with a massive quantity of narcotic substances, he disclosed that the substance was supplied by the petitioner, who had taken it from a police malkhana/store. A high-level inquiry found a prima facie case against the petitioner and arraigned him and SHO as accused.

4. Ld. Counsel for the petitioner contends that the petitioner was on leave and pre-trial incarceration would cause an irreversible injustice to the petitioner and family.

5. Ld. counsel representing the State opposes bail and stated that there was CCTV footings showing the petitioner's entry in the store, when he was not on duty. Furthermore, he was entrusted with the case property and is answerable and accountable.

REASONING:

6. Indisputably, the quantity allegedly involved in this case is commercial. Given this, the rigours of S. 37 of the NDPS Act apply in the present case. The burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act.

7. The status report filed by the State, reads as under:-

".....2. That precisely, the prosecution case against the petitioner and other co-accused is that on 13.10.2020 and 21.10.2020, as per the orders from the senior officers, co-accused Inspector Sukhwinder Singh No. 179/GRP being SHO of the Police station G.R.P., Amritsar was required to deposit parcels of the case properties relating to the NDPS cases in the centralized storehouse (malkhana) of Police Commissionerate, Amritsar after taking it in his custody from the judicial storeroom (malkhana) but after taking the custody of the case properties from the judicial storeroom, he did not deposit the said case properties in the centralized storeroom at Amritsar on the same day and took away those case properties at his official residence situated in the same Police station G.R.P, Amritsar. Thereafter, he in connivance with the petitioner (MHC Kuljit Singh) and Raj Kumar @ Tita replaced the narcotic substances from parcels of the case property with sham materials (tea powder etc.) after breaking Open the seals affixed on them and then it was resealed with the forged similar seals. Later on, those parcels were deposited as case properties in the centralized storeroom, Amritsar on 14.10.2020 and 22.10.2020 respectively after showing the compliance of the procedure with formal documentation. The narcotic substance taken out of the parcels were misappropriated and given to co-accused Vinod

Kumar for the purpose of sale through co-accused Raj Kumar @ Tita.

3. That it is pertinent to mention here that the centralized storehouse (malkhana) of Police Commissionerate, Amritsar remains open for 24 hours in a day and the petitioner was required to deposit the case properties on the same day i.e. on 13.10.2020 and 21.10.2020, after taking its custody from the judicial storeroom.

4. That the racket operated by co-accused Inspector Sukhwinder Singh, SHO of the Police station G.R.P., Amritsar along with the petitioner and other co-accused was busted on 09.11.2020, when sub-Inspector Baljinder Singh of CIA Staff, Amritsar arrested co accused Vinod Kumar son of Kishore Kumar resident of Flat No. 56, 3rd Floor, Maqboolpura, Amritsar from Pannu Chowk, Dapai Road, Amritsar and recovered one kilogram smack (Heroin) from him and a FIR No. 301 dated 09.11.2020 under section 21 & 22 of the NDPS Act, was registered against him at the Police Station Gate Hakiman, Amritsar City. During interrogation, aforesaid co accused Vinod Kumar suffered a disclosure statement dated 09.11.2020 before the investigating officer disclosing therein that he had purchased the recovered smack (Heroin) from co-accused Raj Kumar @ Tita son of Dildar Masih resident of Gawal Mandi, Amritsar by paying him an amount of Rs. 80,000/- for the purpose of further sale and money was to be paid to him after the sale. On the basis of the aforesaid disclosure statement, Raj Kumar @ Tita was nominated as a co-accused in the said case and arrested on 09.11.2020. During interrogation, he suffered a disclosure statement dated 09.11.2020 before the investigating officer disclosing that the smack (Heroin) recovered from co accused Vinod Kumar was given by him to Vinod Kumar, which was procured by him from the petitioner, who was posted as a MHC of the Police station G.R.P., Amritsar, on the promise of payment of Rs. 70,000/- and it was further sold on credit by him to Vinod Kumar for Rs. 80,000/-. He further disclosed that earlier also, he was given charas and ganja four to five times for sale by petitioner and he had paid the money to him after selling the same.

5. That on the basis of the aforesaid disclosure statement of co accused Raj Kumar @ Tita and the petitioner was nominated as a co-accused in the case.

6. That when the matter came to the notice of the Director General of Police, G.R.P (Punjab), Chandigarh, he directed the Superintendent of Police (Investigation), G.R.P (Punjab), camp at Jalandhar to look into the whole case personally and submit his enquiry report vide order dated 18.11.2020. The Superintendent of Police (Investigation), G.R.P (Punjab). Camp at Jalandhar Submitted his detailed enquiry report dated 10.12.2020. The true translation of the concluding paragraph of the aforesaid enquiry report is produced for the kind perusal of this Hon'ble Court as under :

"Inspector Sukhwinder Singh, Station House Officer of the Police Station GRP, Amritsar and LR/ASI Kuljit Singh No. 185, MHC of Police Station G.R.P, Amritsar being public servants misused the authority of their responsible important posts

in connivance of each by not complying with the necessary guidelines for the disposal of the case properties of the NDPS Act after obtaining the same from judicial storerooms (Malkhana) for the purpose of depositing it in the centralized storeroom (Malkhana) and they intentionally kept the case properties of 36 cases in their quarters in the Police station and then dishonestly broke seals of the case properties to take it out with the help of Raj Kumar @ Tita sweeper and thereafter completed its weight by mixing other substances and re-affixing seals and committed criminal breach of trust. In case FIR No. 42 dated 22.06.2006 under section 21 NDPS Act, there was one parcel of 1 K.G 230 gram smack and one parcel of 1 K.G 480 gram smack with 2/2 red coloured seals of MJS/BS per parcel in total 4 red coloured seals were affixed, which were broke open and thereafter 2/2 seals were re-affixed after committing the acts and in case FIR No. 79 dated 22.07.2006 under section 15/61/85 NDPS Act of P.S. GRP, Amritsar, there was one parcel of case property poppy husk weighting 7 kilo 750 grams and it is evident that seals were newly affixed on it with a black coloured sealing wax (lak), so required legal action should be taken against Inspector Sukhwinder Singh, LR/ASI Kuljit Singh No. 185 and Raj Kumar @ Tita after taking legal opinion from D.A (Legal)."

7. That in meantime, the petitioner sent an affidavit through e-mail dated 25.11.2020 to the Assistant Inspector General of Police, G.R.P. (Punjab) giving the details of the modus-operandi used by co-accused Inspector Sukhwinder Singh, for committing misappropriation of the case properties cases pertaining to the NDPS cases in connivance with co-accused Raj Kumar @ Tita and Sunny. He further stated that he (co-accused Inspector Sukhwinder Singh) had sold ½ kilogram smack (heroin) and 6 kilograms ganja to two unknown persons after taking Rs. 2,50,000/- and Rs. 16,000/- respectively from them in his presence. He further stated that Inspector Sukhwinder Singh gave 10 kilograms of poppy husk to Kamaljit Kumar, PSO of the ADGP, Railways after breaking open the seals of the case property in his presence. The petitioner claimed that he was innocent in the entire matter and has been falsely implicated in the case."

8. A reading of the aforesaid enquiry, points out towards petitioner's prima facie role and involvement. It is not only that through his act, the petitioner got possession of massive quantity of different drugs but the tampering of the case property is likely to have a larger devastating effect on the outcome of such cases and the society in general. The allegations are very serious. Given the legislative mandate under section

37 of the NDPS Act, an accused is not entitled to bail even if the quantity is marginally above the commercial quantity.

9. The grounds taken in the bail petition and the arguments advanced do not shift the burden placed by the legislature on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act. Thus, the petitioner has failed to make a case for bail at this

stage.

10. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble 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. PadamNarain Aggarwal* (2008) 13 SCC 305].

11. In *State rep. by CBI v. Anil Sharma*, (1997) 7 SCC 187, Hon'ble 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.

12. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 CrPC.

13. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed in aforesaid terms. Interim protection granted vide order dated Jan 5, 2021 is recalled with immediate effect. The petitioner is directed to surrender without any unjustifiable delay. All pending applications, if any, stand disposed.