

Suresh Kumar vs State Of Punjab on 22 November, 2024

Neutral Citation No:=2024:PHHC:155504

CRM-M-56913-2024

- 1 -

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

211

CRM-M-56913-2024

Date of decision: 22nd November, 2024

Suresh Kumar

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. P.S. Dhaliwal, Advocate for the petitioner.

Mr. A.S. Samra, AAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking anticipatory bail in the FIR mentioned below:-

FIR No.	Dated	Police Station	Sections
129	15.09.2024	Kotwali District Patiala	Nabha, 274, 318, 336, 340 and 61(2) of Bharatiya Nyaya Sanhita, 2023 (for short 'BNS')

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of written complaint submitted by the complainant Somnath, President of Vyapar Mandal, Nabha alleging therein he had received a telephonic call 1 of 6 Neutral Citation No:=2024:PHHC:155504 from

some shopkeeper in the vicinity that driver of a Balero car bearing registration No. HR-67-9131 was present in the area. He was having six boxes containing 96 pieces of Nestle Ghee (clarified butter) in the vehicle and was selling each piece at the rate of Rs. 400/-. As per the information, the ghee so sold was suspected to be adulterated one. On hearing so, the complainant reached at the spot and made inquiries from the driver who disclosed his name as Jagsir Ram and the other person present with him disclosed his name as Soma Ram. As the ghee appeared to be adulterated, therefore, the complainant prayed for taking action in the matter. On this complaint, FIR was registered. Investigation proceedings were initiated. Six boxes containing 16 litres of Nestle everyday ghee were recovered, sample was drawn by District Health Officer, who was called at the spot. Accused Jagsir Ram and Soma Ram suffered disclosure statements on 18.09.2024 to the effect that the present petitioner and his son Himanshu Gupta had installed factory wherein fake Desi ghee was prepared in the name of Nestle Desi ghee and the co-accused Jeepan Singh and Mandeep were working therein. They also disclosed that the ghee boxes were having make as Nestle everyday which was also false one. On the basis of these disclosure statements, the petitioner his son and above named Mandeep were nominated as accused. Offences under Sections 336, 340 and 61(2) of BNS were added. Subsequently, the provisions of Food Adulteration Act, 1954 were also added.

3. As per the further allegations, the accused-Himanshu Gupta i.e.

2 of 6 Neutral Citation No:=2024:PHHC:155504 son of the petitioner was arrested on 18.10.2024. One polythene containing one litre of Nestle Everyday ghee was recovered from him. Co-accused Jeepan was arrested and interrogated on 21.10.2024. He too suffered disclosure statement and also took the names of co-accused Krishan @ Rinku and Mandeep Singh, as the persons who prepared adulterated Desi ghee along with the present petitioner and further disclosed that they used to give the same to different persons for selling the same in general public. He also disclosed about the method used by them for preparation of fake Nestle ghee. Co-accused Krishan @ Rinku was also nominated as an accused. The investigation is still underway. Apprehending his arrest, the petitioner had moved an application for grant of pre-arrest bail before the learned Additional Sessions Judge, Patiala which was dismissed vide order dated 05.11.2024.

4. The present petition has been filed by the petitioner on the grounds and it is argued by his counsel that he has been falsely implicated in this case on the basis of disclosure statement of the co-accused which is not admissible in evidence. He was not named in the FIR. No recovery is to be effected from him. The investigation agency is acting against him on the basis of report of Food Safety Analysis. The power to conduct search and seizure in such like cases has been prescribed under the provisions of Food Safety and Standard Act, 2006 (FSSA) and the police has no power to initiate any action under these provisions. No FIR under the provisions of Bharatiya Nyaya Sanhita, could be registered against the petitioner and only 3 of 6 Neutral Citation No:=2024:PHHC:155504 a complaint under the provisions of Special Act could be filed. His custodial interrogation is not required. No recovery is to be effected from him. He is ready to join the investigation. Therefore, it is urged that he deserves to be extended benefit of bail.

5. Status report has been filed by respondent-State. As per which, the allegations against the petitioner are serious in nature. The offences under Sections 336, 340, 61(2), 274 and 318 of BNS are fully attracted against the petitioner. His custodial interrogation is required for conducting thorough investigation in the matter and for eliciting information about the manner in which the subject offences were committed. No extra ordinary or sparing circumstance has even otherwise been made out for the purpose of extending benefit of bail to the petitioner. Therefore, it is urged that the petition does not deserve to be allowed.

6. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

7. The petitioner is alleged to be involved in the business of preparation of fake desi ghee and is further alleged to have been selling such ghee by using the brand name of Nestle Everyday Ghee and by displaying a fake name/brand of the ghee, to general public thereby endangering their lives by making them purchase and consume adulterated ghee by using a label of renowned branch. Allegations against him are quite serious in nature. The FIR initially registered under the provisions of Indian Penal 4 of 6 Neutral Citation No:=2024:PHHC:155504 Code and now offences under the provisions of BNS, 2023 had been added which are prima facie attracted in this case. The petitioner is a habitual offender as two more cases bearing FIR No. 143 dated 28.10.2023 and FIR No. 65 dated 10.06.2017 both under the similar provisions have been registered against him at Police Station Tapa, District Barnala. To elicit the truth as to the manner in which the petitioner had cheated the general public and for conducting thorough investigation in the matter, the custodial interrogation of the petitioner is must. It is well settled proposition of law that while deciding an application for grant of anticipatory bail, the nature and gravity of the accusation, the part played by the accused, the possibility of his fleeing from justice or likelihood to repeat similar offence or other offences as well as the apprehension of the accused tampering with the evidence or extending threat to the complainant must be considered. The allegations against the petitioner are specific and serious in nature. It is well settled that custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. Moreso, no exception or extra ordinary circumstance warranting exercise of powers for grant of pre-arrest bail is made out in this case. Keeping in view the nature of the subject offences and the role attributed to the petitioner and for the purpose of eliciting the truth, I am of the considered opinion that he does not deserve to be extended benefit of pre-arrest bail. Accordingly, the 5 of 6 Neutral Citation No:=2024:PHHC:155504 petition stands dismissed.

8. It is, however, clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA] JUDGE 22nd November, 2024 Parveen Sharma

1. Whether speaking/ reasoned : Yes / No

2. Whether reportable : Yes / No 6 of 6