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**106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-45835-2024

Date of Decision: 13.09.2024

Arsh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kamal Narula, Advocate, for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Rajesh Bhardwaj, J.

1. The petitioner has approached this Court praying for grant of anticipatory bail in a case FIR No.168, dated 24.09.2023, registered under Section 21 of the NDPS Act, 1985 (Section 29 of the NDPS Act added lateron), at Police Station Sadar Ferozepur, District Ferozepur.

2. Adumbrated facts of the case are that on 24.09.2023 the Police party while on patrolling and checking the suspected persons, received a secret information that Aman son of Malkit and Kush son of Gurmail Singh, who are juveniles and are habitual of selling heroin. If barricading is done, they can be apprehended alongwith the contraband. On finding the information reliable, *ruqa* was prepared and sent to the Police Station. Resultantly, the Police party laid the barricading at the disclosed place and apprehended both the juveniles regarding whom the information was received. On their search, 30 grams of heroin was recovered from them. Both were arrested and investigation commenced. During the investigation, they made a disclosure statement that the contraband recovered from them was supplied to them by accused Arsh (petitioner), hence, he was also



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arrayed as an accused in the present case. Apprehending arrest, the petitioner approached the Court of learned Special Judge, Ferozepur for grant of anticipatory bail, however, after hearing both the sides, the Court declined the same vide order dated 09.09.2024. Aggrieved by the same, the petitioner is before this Court praying for grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in the present case. He submits that neither the petitioner was named in the secret information nor there is any recovery effected from him. He further submits that the petitioner has been arrayed as an accused in the present case only on the basis of disclosure statement made by co-accused, which is not an admissible evidence. He submits that the petitioner is implicated in this case for the reasons that father of the petitioner filed a writ petition bearing No.CWP-24050-2023 praying for preserving the CCTV footage of the Police Station and hence, the petitioner has been implicated in the present case as an act of vendetta by the Police. He submits that the alleged occurrence in the present case has taken place on 24.09.2023 and from the last one year, no efforts were made by the Police to arrest the petitioner, which shows that the petitioner had no complicity in the present case. He submits that from the facts and circumstances of the present case, it is apparent that no *prima facie* case is made out against the petitioner and hence, he deserves to be granted anticipatory bail.

4. Per contra, learned State counsel on instructions has opposed the submissions made by counsel for the petitioner. He submits that recovery in the present case has been effected from co-accused, who are



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juveniles and whose disclosure statement was recorded on 25.09.2023 i.e. immediately after their arrest, but the petitioner is evading his arrested, hence, he is required for the custodial interrogation to reveal the truth regarding the serious offence committed with the involvement of juveniles in the drug peddling. He submits that there being no merit in the present case, the same deserves to be dismissed.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is apparent that co-accused, namely, Aman and Kush were arrested on 24.09.2023 on the basis of secret information, from whom 30 grams of heroin was recovered by the Police. During the investigation, their disclosure statement was recorded on the very next day i.e. 25.09.2023, wherein the petitioner was specifically named. It was disclosed by the co-accused that it was the petitioner who supplied them the recovered contraband. From the facts and circumstances, it is apparent that disclosure statement of the co-accused was recorded on the very next day of their arrest. Though the petitioner is arrayed as an accused on the basis of the disclosure statement of the co-accused, however, this cannot be ignored that both the co-accused are juveniles, which aggravates the gravity of the offence. The petitioner has been evading his arrest from the last one year.

7. The petitioner has approached this Court praying for grant of anticipatory bail, however, Hon'ble Supreme Court in The State of Haryana vs. Samarth Kumar, 2022(3) RCR Cri. 991 has held that in the cases like the present one, the accused may take advantage of facts like no recovery was effected from him and that he was implicated on the basis of



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disclosure statement made by the main accused, at the time of arguing regular bail application or at the time of final hearing after conclusion of trial.

8. 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 disintering 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 disintering offences would not conduct themselves as offenders.”

9. 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 and circumstances of the case on the anvil of law settled, 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.

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

13.09.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No