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

CRM-M-12393-2018

Date of decision: September 28, 2018

Suresh Kumar**....Petitioner****Versus****State of Haryana****....Respondent****CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI**

Present: Mr. Sudhir Rana, Advocate
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

This is a petition filed under Section 438 of Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.34 dated 25.02.2018, under Section 21(C), 21-61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sadar Dabwali, District Sirsa.

It is a case of prosecution that the police party headed by ASI Naresh Kumar, was going on a patrolling in a government vehicle in the area of Dabwali. While passing through the street, they noticed that a young boy aged about 20-25 years was coming out of his house, having a bag in his right hand but on seeing the police party, he reiterated which arouse suspicion in the mind of the Investigating Officer. As such, they chased him, the young boy started going upstairs but on seeing the police

party, he threw the bag in the stairs and escaped through the roof of adjoining house. The bag was checked which contained manufactured drugs like ONEREX Codeine Phosphate Syrup and some packets of CARISOMA tablets and on further checking 36 vials of ONEREX Codeine Phosphate Syrup, out of which 24 vials bearing Batch No.OCCS 1021 and 6 vials bearing Batch No.OCCS 1008 and 6 vials of bath NO.OCCS 1006 were recovered. However, Sarpanch Pawan Kumar and some other villagers reached at the spot. They identified the running person as Suresh Kumar-petitioner.

Learned counsel for the petitioner submitted that Pawan Kumar Sarpanch has suffered an affidavit to the effect that he never identified the petitioner before the police.

Learned State counsel has submitted that the evidentiary value of this affidavit shall be considered at the appropriate stage of the trial. He relied upon the report of Forensic Science Laboratory.

I have heard learned counsel for the parties and have gone through the record.

The recovery effected in this case falls within the ambit of commercial quantity of the contraband, therefore, Section 37 of the Act applies. In a recent judgment Hon'ble the Supreme Court in case ***Satpal Singh Vs. State of Punjab, 2018(5) 519*** has discussed in detail with regard to bail in commercial quantity of the contraband which read as under:-

3. Section 37 of the NDPS Act reads as follows :-

*“Offences to be cognizable and non-bailable – (1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -*

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences

under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]” (Emphasis supplied)

4. Under Section 37 of the NDPS Act, when a person is accused of an offence punishable under Section 19 or 24 or 27A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. Materials on record are to be seen and the antecedents of the accused is to be examined to enter such a satisfaction. These limitations are in addition to those prescribed under the Cr.P.C or any other law in force on the grant of bail. In view of the seriousness of the offence, the law makers have consciously put such stringent restrictions on the discretion available to the court while considering application for release of a person on bail.”

The remedy of anticipatory bail is extraordinary and should be used in exceptional cases. The Hon'ble Supreme Court in ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*** 2011 AIR (SC) 312 pleased to issue the following parameters:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. *The possibility of the applicant to flee from justice;*
- iv. *The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. *The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. *The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”*

The evidentiary value of the affidavit of Pawan Kumar son of Amar Chand, shall be considered at the appropriate stage.

Without expressing any opinion on the merits of the case, this court is of the opinion that petitioner is not entitled for the benefit of anticipatory bail. As such, petition is dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

September 28, 2018
m. sharma

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