

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM-M-27834-2021 (O&M).
Decided on: November 23, 2021.

Kulvir Singh

.. Petitioner

VERSUS

State of Punjab

.. Respondent

* * *

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

* * *

PRESENT Mr.Tanvir Singh Grewal, Advocate,
for the petitioner.

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure, seeking anticipatory bail in FIR No.66 dated 1.6.2021, under Sections 22 and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985, (Section 29 added later on) registered at Police Station Sadar Sangrur, District Sangrur.

Learned counsel for the petitioner has submitted that the petitioner was granted interim bail on 23.8.2021 and in pursuance thereof he has joined investigation. He submitted that it is a case where the name of the petitioner did not figure in the FIR and he was nominated on the basis of

disclosure statement of co-accused and therefore, in view of the law laid down by Hon'ble the Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (CrL) 1*, the petitioner is entitled for the grant of anticipatory bail. He submitted that there was no other sufficient material to connect the petitioner with the present offence and therefore, he may be granted the concession of anticipatory bail.

On the other hand, learned State counsel has submitted that a detailed affidavit of the Deputy Superintendent of Police, Sub Division, Sangrur, has been filed in the present case and while referring to the aforesaid affidavit, it is submitted that it is a case where there was recovery of huge quantity of 4000 tablets from other co-accused and on the basis of their disclosure statement, the name of the petitioner was nominated. While referring to affidavit, he submitted that when other two accused namely Ravi Kumar @ Kaku and Nirmal Sharma @ Nimu, were arrested, then during interrogation both the accused disclosed that Kulvir Singh (petitioner) resident of Saron and Sukhvir Singh son of Jangir Singh resident of Talwandi Malik do the business of selling intoxicant tablets due to which both of them got acquainted with Kulvir Singh (petitioner) and Sukhvir Singh. Accused Ravi Kumar stated that his mobile Number is 82888-30800 and mobile phone number of Kulvir Singh (petitioner) is 98760-04166 and mobile number of Sukhvir Singh is 73745-22880. After consulting with them on their above mentioned mobile numbers, they started to purchase intoxicant tablets from Kulvir Singh (petitioner) and Sukhvir Singh on credit and used to sell it further and there was enough income on this account. Even yesterday, they had talked with Sukhvir Singh and as per time given by him, they met him

and brought 2000 intoxicant tablets for Rs.12,000/- on credit and they had to give money to Sukhvir Singh after selling these tablets and 2-3 days before, they had talked to Kulvir Singh (petitioner) and as per time given by him, they reached his village at Saron and he came outside the village and handed over 2000 intoxicant tablets for Rs.11,500/- on credit and returned back and after selling these intoxicant tablets, the money was to be given to Kulvir Singh (petitioner). On the basis of disclosure statement made by accused Ravi Kumar @ Kaku and Nirmal Sharma @ Nimu, Kulvir Singh (petitioner) and Sukhvir Singh were nominated as accused under Section 29 of the NDPS Act on 1.6.2021. He further submitted that although other co-accused namely Sukhvir Singh who was nominated was arrested on 2.6.2021 but Kulvir Singh (petitioner) could not be arrested as he was absconding.

Learned State counsel further submitted that although the petitioner was granted interim bail on the basis of submissions made by the learned counsel for the petitioner and pursuant to the affidavit filed by the State, the petitioner although joined the investigation but has not cooperated with the investigation process. He submitted that although there was no other case registered against the petitioner but the role attributable to the petitioner shows that he was actively involved in the drug trafficking. He submitted that interim anticipatory bail was granted at the time when FSL report still awaited and now the FSL report has been received in which it is clear that confiscated tablets contained salt tramadol and the total weight as per FSL report comes to 1089.3 grams which is a commercial quantity and furthermore, even after grant of anticipatory bail the petitioner has not cooperated with the investigation process.

While referring to para 4 of the affidavit providing description of the role attributable to the petitioner, learned State counsel submitted that all the four accused were in touch with each other through their mobile phones and the CDR of mobile phone No. 98760-04166 of the petitioner Kulvir Singh and mobile phone No.82888-30800 of accused Ravi Kumar @ Kaku was obtained and perusal of which, revealed that for the period between 15.05.2021 to 01.06.2021, Kulvir Singh, petitioner/accused made five phone calls and one SMS from his mobile phone No. 98760-04166 to accused Ravi Kumar @ Kaku on his mobile phone No.82888-30800 and accused Ravi Kumar @ Kaku made 9 calls from his mobile phone No.82888-30800 to Kulvir Singh, petitioner on his mobile phone No. 98760-04166. So, it is evident that the petitioner Kulvir Singh was linked with accused Ravi Kumar and was found to be indulged in nefarious activities of drug trafficking.

Learned State counsel further submitted that custodial interrogation of the petitioner is required in order to ascertain the source of origin and to unravel the truth and to complete the investigation in a proper manner. He further submitted that case of the petitioner is also hit by the bar contained under Section 37 of the NDPS Act since the confiscated quantity is commercial quantity and therefore, he has prayed for dismissal of the present petition.

I have heard the learned counsel for the parties.

Although the petitioner was granted interim bail but it has been specifically stated by the learned State counsel that despite the orders passed by this Court, the petitioner has not cooperated with the investigation

process. Furthermore, at the time of grant of interim anticipatory bail, FSL report was still awaited and it could not be ascertained as to whether the alleged intoxicant tablets were covered under the NDPS Act or not. Thereafter, the FSL report has been received in which it was found that the tramadol salt weighed 1089.3 grams which is clearly a commercial quantity under the NDPS Act. Now the argument raised by the learned counsel for the petitioner that his name was nominated purely on the basis of disclosure statement and therefore, he is entitled for anticipatory bail would not be sustainable in view of the fact that there are other supporting material available on the record to show that the petitioner was having phone call interaction with other co-accused prior to the lodging of the FIR and various other details have been provided in the affidavit regarding the amount of money received on credit. After the receipt of the FSL report, the confiscated quantity is commercial quantity and therefore, the case of the petitioner will be hit by the bar contained under Section 37 of the NDPS Act. Prima facie view recorded by this Court while granting interim anticipatory bail to the petitioner would not be of any avail to the petitioner as it was only for the stage when FSL report was not received. Therefore, the argument raised by the learned State counsel that for the purpose of elicitation of truth and to ascertain the source of origin, custodial interrogation of the petitioner is required does carry weight. After receipt of FSL report, the plea of the petitioner shall be hit by the bar contained under Section 37 of the NDPS Act. This Court does not find any ground to make a departure from the aforesaid bar contained under Section 37 of the NDPS Act and therefore, finding no merit in the present petition, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

November 23, 2021.	(JASGURPREET SINGH PURI)
raj arora	JUDGE
Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No