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

CRM-M-9544-2022

Date of decision : 07.03.2022

Baljinder Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Yashpal Thakur, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.255 dated 26.11.2021 registered under Sections 21/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Sunam, District Sangrur.

Learned counsel for the petitioner has submitted that in the present case, no recovery has been effected from the petitioner and the recovery has been effected from one Kaki and even the said recovery is of 5 grams of heroin which falls within the definition of “small quantity” and is far less than the stipulated commercial quantity which starts from

250 grams. It is further submitted that the petitioner has been implicated on the basis of statement of co-accused which has been made in the police custody and is inadmissible in evidence. He has relied upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1**, an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled **"Mewa Singh Vs. State of Punjab"**, and an order of another Coordinate Bench dated 16.07.2021 passed in **CRM-M-12997-2020** titled as **"Daljit Singh Vs. State of Haryana"** to contend that in such like cases if a person has only been proceeded against on the basis of disclosure statement of co-accused and no recovery has been effected from the petitioner, then he should be granted the benefit of anticipatory bail.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that the present petitioner is involved in several other cases.

Learned counsel for the petitioner, in rebuttal to the abovesaid argument, has submitted that in all the other cases, the petitioner has either already undergone sentence or has been granted the benefit of bail. He has further relied upon the judgment of Hon'ble

Supreme Court in **“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”**, reported as **2012 (2) SCC 382** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Keeping in view the abovesaid facts and circumstances moreso, the fact that no recovery has been effected from the petitioner and even the recovery effected from the co-accused is of 5 grams of heroin which falls within the definition of “small quantity” and is far less than the stipulated commercial quantity, which starts from 250 grams, and also in view of the law laid down in **Tofan Singh's case** (Supra), **Mewa Singh's case** (Supra), **Daljit Singh's case** (Supra) and **Maulana Mohd. Amir Rashadi's case** (Supra), the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to her furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation or does not cooperate with the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

07.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No