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

**CRM-M-11207-2022
Date of Decision: 24.08.2022**

Anoop Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.S. Mahal, Advocate for
Mr. Paras Jagga, Advocate,
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case bearing FIR No.107 dated 25.06.2021, under Section 21 of the NDPS Act, 1985, registered at Police Station Dehlon, District Police Commissionerate, Ludhiana.

It has been submitted by learned counsel for the petitioner that the petitioner was granted interim bail by this Court vide order dated 16.03.2022 and in pursuance thereof, he has already joined the investigation and he has fully cooperated with the investigation process. He further submitted that the name of the petitioner was nominated on the basis of disclosure statement of the co-accused, namely, Hitesh, from whom, there was an alleged recovery of 10 grams of *Heroin*, which does not fall in the category of commercial quantity. He further submitted that it is a settled law

that the disclosure statement of a co-accused is not admissible in evidence *per se* unless there is a sufficient material available with the prosecution to link the accused with the offence. He also submitted that in the present case, the petitioner has got clean antecedents and is not involved in any other case and there is no sufficient material available with the police to connect the petitioner with the aforesaid offence apart from the disclosure statement of the co-accused. He further submitted that the other similarly situated co-accused, namely, Sanjiv Kumar has been granted interim anticipatory bail by this Court which has been made absolute vide order dated 25.10.2021 (Annexure P-3).

On the other hand, Mr. Amit Rana, Sr. Deputy Advocate General, Punjab has submitted on instructions from ASI Mewa Singh that it is correct that the petitioner in pursuance of the order passed by this Court on 16.03.2022 has joined investigation and the petitioner is not involved in any other case as per his instructions. He further stated that it is also correct that the name of the petitioner was nominated on the basis of disclosure statement of the co-accused, namely, Hitesh. He has, however, submitted that there are call links between the petitioner and the person on whose disclosure statement his name was nominated.

I have heard the learned counsels for the parties.

The petitioner in pursuance of the order passed by this Court on 16.03.2022 has joined investigation. The only objection which has been raised by the learned State counsel is that there are certain call links with regard to the present petitioner and the person, who has made disclosure statement. The confiscated quantity from the co-accused in the present case

does not fall in the category of commercial quantity. It is a settled law that the disclosure statement made by the co-accused is not admissible in evidence unless corroborated with any other sufficient material, reference can be made to judgment of Hon'ble Supreme Court passed in “Tofan Singh Vs. State of Tamil Nadu”, 2021(1) RCR (Criminal) 1.

At the time of arguments, a query was raised to the learned State counsel as to whether there is any call recordings with regard to the call details mentioned by the State, the learned State counsel, who sought assistance from the police officer present in the Court, stated that there is no call recordings available. Therefore, considering the fact that the confiscated quantity does not fall in the category of commercial quantity under the NDPS Act and therefore, this Court is of the view that the anticipatory bail cannot be denied to the petitioner only on the ground that the petitioner had talked to the co-accused either on the day the alleged offence was committed or prior to that and there is no sufficient material available with the prosecution or argued by the learned State counsel in this regard for connecting the petitioner in the present case. Apart from the same, the similarly situated co-accused, namely, Sanjiv Kumar has already been granted bail by this Court.

In view of the aforesaid position, especially in view of the fact that the petitioner has admittedly joined the investigation, the present petition deserves to succeed.

Consequently, the present petition is allowed and the order dated 16.03.2022 is hereby made absolute.

However, anything observed hereinabove shall not be treated as

an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

24.08.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes/No |