

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

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CRM-M-23270-2022

Date of Decision : August 23, 2022

KULVEER SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Gourav Goel, Advocate
for the petitioner.

Mr. Amit Rana, Sr. Deputy A.G., Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.57 dated 2.3.2021 under Section 22 of NDPS Act and (Sections 29, 61, 85 of NDPS (added later on), registered at Police Station Patran, District Patiala.

It has been submitted by the learned counsel for the petitioner that the name of the petitioner was nominated on the basis of a disclosure statement made by co-accused, namely, Surinder Singh @ Kali from whom there was an alleged recovery of 2460 tablets of tramadol. He submitted that the disclosure statement made by the co-accused is not admissible in evidence and there is no other sufficient material available with the police to connect the petitioner with the present offence apart from the disclosure statement made by the co-accused. He further submitted that the petitioner is not involved in any other case and, therefore, he may be considered for the grant of anticipatory bail. He submitted that the challan has already been presented against the main accused.

On the other hand, the learned State counsel while referring to the affidavit filed by the State has submitted that it is a case where recovery of 2460 tablets of tramadol from the other co-accused which falls in the category of commercial quantity and, therefore, the prayer made by the petitioner for the grant of anticipatory bail is barred by the provisions of Section 37 of NDPS Act. He further submitted that during the course of investigation it was found that the petitioner had made three telephonic calls on the same day with co-accused Surinder Singh @ Kali when the offence was committed and apart from the same, he submitted that the tower locations also matched with the other co-accused. He submitted that the argument raised by the learned counsel for the petitioner that his name was nominated on the basis of a disclosure statement made by co-accused which is not admissible in evidence is not available to the petitioner in view of the judgment of the Hon'ble Supreme Court in ***State of Haryana Vs. Samarth Kumar, Crl. Appeal No.1005 of 2022*** since the present case pertains to the grant of anticipatory bail. He further submitted that as per the disclosure statement, the petitioner had supplied the tramadol tablets alongwith other co-accused, namely, Sukhpal Singh @ Sukha and the petitioner is absconding for more than one year and the challan has been presented against the co-accused but no process for filing of the challan against the petitioner could be initiated because he is absconding and not joining the investigation.

I have heard the learned counsels for the parties.

It is a case where there is alleged recovery of 2460 tablets of tramadol from the co-accused which falls in the category of commercial quantity under the NDPS Act. Although the petitioner is not involved in any other case but as per the submissions made by the learned State counsel as well as the affidavit filed by the State the allegations against the petitioner are that he alongwith other person had supplied the tablets to the other co-accused who was arrested. The argument raised by the learned counsel for the petitioner that the disclosure statement of a co-

accused is not admissible in evidence *per se* would not be available to the petitioner because of two reasons. Firstly, the alleged confiscated quantity falls in the category of commercial quantity under the provisions of the NDPS Act and, therefore, the provisions of Section 37 of NDPS Act will apply in the present case. Secondly, the present petition is for grant of anticipatory bail and in view of the judgment of the Hon'ble Supreme Court in Samarth Kumar's case (Supra) such a plea will not be available to the petitioner. No ground has been made in the present case by the petitioner for making a departure from the bar contained under Section 37 of the NDPS Act. The argument raised by the learned State counsel that for more than one year the petitioner has been absconding and in order to ascertain the source of the contraband the custodial investigation of the petitioner is required cannot be ignored and carries weight.

Consequently, finding no merit in the present petition, the same is, hereby, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

August 23, 2022
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No