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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33298-2022

Date of Decision: 01.08.2022

Inderjit Singh

....Petitioner(s)

Versus

N.C.B Chandigarh

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Navkiran Singh, Advocate, for the petitioner.

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 Crime Case No.50/2022 dated 10.07.2022, under Sections 8, 15, 18, 21, 25, 29 and 60 of NDPS Act, registered at Police Station NCB Chandigarh.

As per the allegations contained in the complaint the police has received some information from reliable sources that two persons namely, Kuljeet Singh and Hemraj are involved in trafficking of Opium and Poppy Straw and both of them are there in the truck bearing registration No. PB-10FV-5855 which will halt at New Sukhdev Khalsa Punjabi Dhaba, Shahabad on 10.07.2022 in the morning and inside the truck there is a huge quantity of Opium and Poppy Straw and in case it is intercepted, then there can be seizure of huge quantity of Opium and Poppy Straw. Thereafter, the police on information acted and apprehended the aforesaid two persons.

Thereafter on the basis of disclosure statement of these two co-accused the name of the petitioner was nominated and Section 29 of the NDPS Act was added on the ground that he was to receive the contraband alongwith another person namely Jassu and the contraband was to come from Jharkhand.

The learned counsel for the petitioner has submitted that the name of the petitioner has been nominated on the basis of the disclosure statement of a co-accused which is not admissible in evidence and has submitted that the mere fact that there was some telephone conversation between the petitioner and the other co-accused would not infer that the petitioner is involved in the present offence. He further submitted that there is no material available with the prosecution to connect the petitioner with the present offence and therefore, he may be considered for the grant of anticipatory bail.

On the other hand, Mr. Akash Vashisth, Advocate has appeared on behalf of Mr. Sanjay Vashisth, Advocate, for the respondent-NCB and has submitted that he has received an advance copy of the present petition and he has also sought instructions. He further submitted that it is a case where there has been a recovery of 194.200 kgs. of Poppy Straw, 4.100 Kgs. of Opium and 6000 tablets of Lomotil containing the salt of Diphenoxylate and the recovery falls in the commercial quantity under the NDPS Act. He further submitted that although the name of the petitioner was nominated on the basis of disclosure statement of the co-accused but the investigating agency has got sufficient material to connect the petitioner with the present offence including telephonic calls between the petitioner and the other co-accused. He further submitted that the modus operandi involved in the present case was that the petitioner and one of the

other co-accused were the prospective buyers and they had given money for purchasing the drugs which had come from Jharkhand to the other co-accused who were arrested on the spot. He further submitted that the prayer of the present petitioner is hit by the bar contained under Section 37 of the NDPS Act and there is no ground available with the petitioner to make a departure from the same. He further referred to para No.14 of the present petition wherein the petitioner has himself given the chart of other cases in which he was involved. He further submitted that a perusal of the same would show that earlier the petitioner was convicted for 10 years under Section 15 of the NDPS Act and in the remaining cases out of which one pertains to NDPS Act and other pertain to Sections 452, 323, 324 IPC in which he has been acquitted. He further submitted that in view of the antecedents of the petitioner whereby he has already been convicted under the NDPS Act and the sufficient material available with the prosecution, the petitioner does not deserve the concession of anticipatory bail. He further referred to the judgment of the Hon'ble Supreme Court in ***State of Haryana Versus Samarth Kumar [Criminal Appeal No.1005 of 2022]*** to contend that the mere fact that the petitioner was nominated on the basis of disclosure statement cannot become a relevant factor for considering the grant of anticipatory bail as the same may be a ground for considering the prayer of regular bail.

I have heard the learned counsel for the parties.

In the present case although the petitioner was nominated on the basis of disclosure statement of the co-accused but from the two co-accused there had been a huge recovery of 194.200 kgs. of Poppy Straw, 4.100 Kgs. of Opium and 6000 tablets of Lomotil containing the salt of Dipenoxylate.

Undoubtedly the said recovery falls in the category of commercial quantity under the NDPS Act. The learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act. Apart from the same, the petitioner was earlier also involved in three more cases out of which in one case he has been convicted for 10 years under the NDPS Act. The argument raised by the learned State counsel that in view of the judgment of the Hon'ble Supreme Court in *State of Haryana Versus Samarth Kumar (Supra)*, the anticipatory bail application would not maintainable would also carry weight.

In view of the aforesaid position, the present petition is hereby dismissed.

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

01.08.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

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