

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

**CRM-M No.40016 of 2021
Date of Decision: 29.10.2022**

Onkar

.....Petitioner.

Versus

The State of Haryana and another

.....Respondents.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Present:- Mr. Satnam Singh Gill, Advocate
for the petitioner.

Ms. Ambika Sood, Addl. A.G, Haryana
for respondent No.1-State.

Mr. Rajiv Sharma, Senior Central Government Counsel
for respondent No.2-NCB.

MEENAKSHI I. MEHTA, J.(Oral)

The petitioner herein has sought the relief of anticipatory/pre-arrest bail in the criminal case arisen out of the FIR bearing No.135 dated 05.08.2021 registered at Police Station Jhansa, District Kurukshetra, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, wherein the offences under Sections 27-A and 31-A of the said Act are stated to have been added later-on.

2. It is pertinent to mention here that subsequently, respondent No.2 (Narcotic Control Bureau) took over the investigation of the case and

registered Crime No.80 of 2021 on the basis of the allegations levelled in the subject FIR.

3. Shorn and short of unnecessary details, the allegations, as levelled against the petitioner in the present case, are that his co-accused Tej Partap @ Tabu was apprehended by the police and his personal search resulted in the recovery of 285 grams '*heroin*' and thereafter, the search of his house, as conducted in pursuance of his disclosure statement, led to the recovery of 520 grams '*heroin*' and thus, 805 (285+520) grams '*heroin*', falling under the category of the 'commercial quantity' and attracting the rigours of Section 37 of the NDPS Act, was recovered from him and he had also disclosed that the petitioner used to further sell the contraband to the customers at his instance and to get the commission in lieu thereof.

4. Vide the order dated 24.09.2021, the petitioner was extended the relief of interim bail by the Co-ordinate Bench with the direction to join in the investigation. On 18.07.2022, learned counsel for respondent No.2-Bureau informed the Court that though the petitioner had joined in the investigation but he did not co-operate with the investigating agency and then, on the request of learned counsel for the petitioner, one more opportunity was granted to him (petitioner) to join in the investigation.

5. Today, learned counsel for respondent No.2-Bureau, on the instructions from Mr. Kuldeep Tomar, Intelligence Officer (NCB), apprises the Court that although the petitioner did join in the investigation but he has, again, not co-operated in the same as he has not disclosed the requisite details of the bank accounts as well as of the mobile phone calls. In these

circumstances, it is explicit that the petitioner has not complied with the direction given to him by this Court on 18.07.2022 for the second time.

6. Faced with this situation, learned counsel for the petitioner contends that no contraband had been recovered from the possession of the petitioner and he has been implicated in the case merely on the basis of the disclosure statement as allegedly suffered by his co-accused and therefore, he deserves the relief as prayed for in the instant petition. To buttress his contentions, he places reliance upon the order passed by the Apex Court on 11.10.2022 in **Prabhulal Vs. Central Bureau of Narcotics, Petition(s) for Special Leave to Appeal {Crl.} No.6744/2022, arising out of the judgment and order dated 05.05.2022 in MCRC No.63419/2021 passed by the High Court of M.P at Indore**) but however, the same would not be of any avail to the petitioner because vide the said order, the petitioner therein has been granted only the interim relief qua the stay on his arrest, while issuing notice for 15.11.2022.

7. Rather, Hon'ble Supreme Court has categorically observed in the judgment handed down in **The State of Haryana Versus Samarth Kumar, Criminal Appeal No.1005 of 2022 (arising out of Special Leave Petition {CRL.} No.6575 of 2021)** on 20.07.2022 that “where the High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from them and that they had been implicated only on the basis of the disclosure statement of the main accused, the grant of anticipatory bail was not really warranted.” To cap it all, in a recent judgment as rendered on 21.10.2022 in **Union of India**

(NCB) etc. Versus Khalil Uddin Etc, 2022 LiveLaw (SC) 878, the Apex Court has allowed the appeal and has even set aside the order passed by the Gauhati High Court granting the relief of regular bail to the respondents-accused therein and has directed that both the accused be taken into custody, while observing that “*in the face of the mandate of Section 37 of the NDPS Act, the High Court could not and ought not to have released the accused on bail.*”

8. Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of anticipatory/pre-arrest bail. Resultantly, the petition in hand stands dismissed accordingly.

9. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.

October 29, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>