

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

CRM-M-35967 of 2022
Date of decision: 07.09.2022

Gurpreet Singh

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Chandan Singh Rana,
Advocate, for the petitioner.

Mr. G.S. Sandhu, Deputy Advocate General, Punjab.

ASHOK KUMAR VERMA, J. (ORAL)

Status report dated 23.08.2022 by way of affidavit of Raminder Singh, Deputy Superintendent of Police, Khamano, District Fatehgarh Sahib, Punjab, on behalf of the respondent-State, filed in Court today is taken on record.

Through this petition under Section 438 Cr.P.C. prayer has been made for grant of anticipatory bail to the petitioner in case FIR No.89 dated 14.07.2022 registered under Section 18(c) and lateron added Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') at Police Station Khamanon, District Fatehgarh Sahib.

As per the case of the prosecution, Rajwinder Singh @ Rajji was apprehended by the police and from the dickey of his Activa Scooter 5 kilograms of opium was recovered. During investigation, Rajwinder

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Singh @ Rajji made disclosure statement to the effect that 5 kilograms of opium recovered from him was given to him by the petitioner. On the basis of disclosure statement, petitioner was nominated in the present case and was granted interim bail by Judge, Special Court, Fatehgarh Sahib, vide order dated 01.08.2022. Petitioner joined the investigation and has made disclosure statement before the police that he has given 5 kilograms of opium to Rajwinder Singh @ Rajji to supply the same to someone near Khamanon Pully Sua.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case on the basis of disclosure statement of co-accused, namely, Rajwinder Singh. No recovery has been effected from the petitioner. Except disclosure statement of his co-accused there is no evidence against the petitioner. Learned counsel further contends that confessional statement recorded under Section 67 of the NDPS Act is inadmissible in view of the law laid down by the Hon'ble Supreme Court in *Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1*. Petitioner is not involved in any case under the NDPS Act or any criminal case. He is ready and willing to join the investigation.

On the other hand, learned State counsel opposed the petition for grant of anticipatory bail to the petitioner.

I have heard learned counsel for the petitioner as well as learned State counsel and perused the record.

Perusal of the record shows that 5 kilograms of opium, which falls under the category of “commercial quantity”, was recovered from the dickey of scooter of co-accused of the petitioner, namely, Rajwinder

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Singh @ Rajji, who made disclosure statement that it was given to him by the petitioner. As per status report, during investigation petitioner has stated that 5 kilogram opium recovered from co-accused Rajwinder Singh belonged to him and he himself had placed the said opium in the dickey of Activa Scooter.

In State of ***Haryana vs Samarth Kumar, 2022 Live Law (SC) 622***, the Hon'ble Supreme Court held that the accused is not entitled for anticipatory bail only on the ground that no recovery was effected from the accused and he has been implicated on the basis of disclosure statement.

In ***Samrath Kumar's*** case (supra) the Hon'ble Supreme Court observed as under:-

*“In cases of this nature, the respondent may be able to take advantage of the decision in **Tofan Singh vs State of Tamil Nadu (supra)**, perhaps at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial. To grant anticipatory bail in case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”*

Recovery effected from the co-accused is heavy 'commercial' quantity, which strongly points out that the contraband was intended for commercial/business purpose and not for personal consumption. In view of the ratio of the abovementioned judgment, this Court is of the considered view that for proper investigation; to find any nexus between the petitioner and his co-accused and for knowing the source of

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contraband, the custodial interrogation of the petitioner is necessary.

In view of above, petition is dismissed.

September 07, 2022
R.S.

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes