

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-49890-2022

Date of Decision: 29.10.2022

Sukhpreet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Gaurav Mohunta and Mr.Nishant Arora, Advocates
for the petitioner

Mr.G.S.Sandhu, DAG, Punjab

ASHOK KUMAR VERMA, J.

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in FIR No.208 dated 7.9.2022 under Sections 22, 29, 61, 85 of the NDPS Act registered at Police Station Sadar Samana, District Patiala.

As per prosecution story, on the basis of secret information received, FIR was lodged by name against Avtar Singh and Prabhjot Singh. Avtar Singh alongwith Prabhjot Singh were coming on motor cycle but on seeing the police party, Avtar Singh was able to flee away, though the polythene which was kept on the oil tank of the motor cycle had fallen down from which 12 vials were recovered. The said vials were sent to the lab and salt of the same has been opined to be codeine phosphate. It was during the interrogation of Prabhjot Singh, the name of the petitioner had come to light stating that the said contraband was bought from the petitioner.

Learned Counsel appearing for the petitioner, *inter alia*,

submits that the petitioner has not been named in the FIR. The petitioner is sought to be implicated only on the basis of disclosure statement made by co-accused- Prabhjot 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*. He is already 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. Learned counsel submits that the said contraband was bought by the co-accused from the petitioner. As such his custodial interrogation is required for finding out the source of contraband.

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

Perusal of the record shows that on the basis of secret information received, the FIR was lodged against Avtar Singh and Prabhjot Singh by name. Motorcycle was intercepted, though Avtar Singh who was allegedly driving the motorcycle fled away. The polythene containing 12 vials had fallen down alongwith the mobile phone which was recovered. During interrogation of Prabhjot Singh, name of the petitioner came to light. Samples sent to the Forensic Science Laboratory consisting of 12 vials shows that the contents of salt have been opined to be that of codeine phosphote. It is a case of 1475.16 grams (1200 ml x 1.2293 grams per ml), which falls under the category of “commercial quantity”. Co-accused-Prabhjot Singh disclosed that he had bought the

contraband from the petitioner.

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 above mentioned 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 contraband, the custodial interrogation of the petitioner is necessary. In view of above, petition is dismissed.

(ASHOK KUMAR VERMA)
JUDGE

29.10.2022

MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No