

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.203

Case No. : CRM-M-50081 of 2022

Date of Decision : December 07, 2022

Jatin Nanda		Petitioner
vs.		
State of Punjab		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Ashok Giri, Advocate
for the petitioner.

Mr. Karandeep Sharma, AAG, Punjab.

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GURBIR SINGH, J. :

The present petition under Section 438 Cr.P.C. has been filed by the petitioner for grant of pre-arrest bail in case FIR No.167 dated 07.10.2022, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – the Act) (Section 29 of the Act added later on), registered at Police Station Kartarpur, District Jalandhar (Rural).

Pursuant to order dated 29.10.2022, Status Report by way of affidavit of Surinderpal, PPS, Deputy Superintendent of Police, Sub-Division Kartarpur, District Jalandhar (Rural), has been filed by learned State counsel, which is ordered to be taken on record.

I have heard learned counsel for the parties and perused the case file.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR. He was subsequently nominated in

this case on the basis of disclosure statement made by co-accused Hardeep Singh, who was found in possession of 7000 tablets alleged to be containing some intoxicants. While in custody, during investigation, he suffered disclosure statement that he had been purchasing the said tablets from the petitioner for the last 8-9 months. The petitioner is running a Chemist shop being Proprietor of Capital Pharma. He has been issued license for sale, stock or exhibit for sale or distribution by retail and also wholesale the drugs under the Drugs and Cosmetics Rules, 1945. The said licenses are valid up to 23.01.2006.

Counsel for the petitioner further submitted that is well settled that onus to prove the charge under Section 29 of the Act rests upon the prosecution, as has been held by a Division Bench of this Court in **Nek Chand @ Neka and another vs. State of Haryana** reported as **2015 (2) RCR (Criminal) 691**. Since the petitioner has nothing to do with the recovered drugs, Section 37 of the Act must be construed in a pragmatic manner and it cannot be construed in such a way so as to negate right of a party to obtain bail. It is further contended that earlier also, a false was registered against the petitioner. In that case, brother of the petitioner moved an application for inquiry. After conducting inquiry, the then Deputy Superintendent of Police recommended action against the officials. Now, the petitioner has been involved in the instant case to take revenge.

Learned State counsel, on the other hand, while opposing the prayer made by learned counsel for the petitioner, has submitted that other

than the present FIR, earlier also, FIR No. 113 dated 01.07.2018, under Section 22/61/85 of the Act was registered at Police Station Division No.1, Jalandhar against the petitioner.

Learned State counsel further stated that 7000 intoxicating tablets were recovered from the possession of Hardeep Singh. As per the disclosure statement, 120 used strips of 50/50 tablets each of Tramadol Hydrochloride were recovered from the disclosed place. While in custody, Hardeep Singh has made a disclosure statement that he had been purchasing the intoxicating tablets Tramadol from the petitioner for the last 8-9 months. After purchasing the same, those were being sold to young boys in loose form. He further disclosed that he used to contact the petitioner from his mobile number 70878-70488 to the petitioner's mobile number 79863-84037. The call details of the mobile number of the petitioner w.e.f. 01.09.2022 to 06.10.2022 were obtained. There are 40 calls between the above-said parties. As per the call detail, Hardeep Singh had called the petitioner at 01:07 PM on 06.10.2022 whereas the petitioner had called him at 10:13 PM on the same day i.e. 06.10.2022. So, they were regularly in touch.

To support his case, learned State counsel has relied upon a judgment of Hon'ble Supreme Court in State of Haryana vs. Samarth Kumar reported as 2022 (3) RCR (Criminal) 991, and also a judgment passed by this Court in the case of Rajni Kaur vs. State of Punjab passed by a Co-ordinate Bench in CRM-M-25142-2022, decided on 24.11.2022.

It is not disputed that 7000 intoxicating tablets were recovered

from the co-accused Hardeep Singh. On the basis of disclosure statement, Section 29 of the Act was added and petitioner was nominated in this case. The petitioner is having retail as well as wholesale license to sell the drugs. The recovery of intoxicating tablets from Hardeep Singh apparently is of the commercial quantity. Since Hardeep Singh is not having any drug license, the petitioner could not have sold the huge quantity of drugs to Hardeep Singh in such a manner. Such a huge quantity of intoxicating tablets could not be sold in retail. In case of **Rajni Kaur (supra)**, a Co-ordinate Bench of this Court, following the judgment of **Toofan Singh vs. State of Tamil Nadu** reported as **2021 (1) RCR (Criminal) 1**, held that anticipatory bail cannot be granted to an accused on the ground that he has only been named on the basis of a disclosure statement of the co-accused and the judgment in **Toofan Singh (supra)** may be relevant for the grant of regular bail or at the time of final adjudication of the trial.

The present case would squarely fall within the four corners of the judgment of the Hon'ble Supreme Court in **Samarth Kumar's** case (**supra**). Another case under the Act was also registered against the petitioner in the year 2018 and trial of said case is pending in the Court of Judge, Special Court, Jalandhar. The custodial interrogation of the petitioner is necessary so as to complete the chain of supply and also to find out the persons who are involved in the drug trade.

Keeping in view the above said facts and totality of circumstances and also in view of the law laid down in the afore-said

judgments, I find no merit in the present petition filed for grant of anticipatory bail.

Dismissed.

Nothing stated herein above shall be construed as an expression of opinion on the merits of the case.

December 07, 2022

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**(GURBIR SINGH)
JUDGE**

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>