

CRM-M-50967-2022

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

Sr. No.264

CRM-M-50967-2022

Date of decision : 21.12.2022

Balesh Kumar

.....Petitioner(s)

Versus

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Aditya Sanghi, Advocate for the petitioner(s)

Ms.Aditi Girdhar, AAG, Haryana

AMAN CHAUDHARY, J.

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.906 dated 16.10.2022, registered under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sirsa City, District Sirsa.

As per the prosecution version, a police party headed by ASI Udham Singh apprehended a suspect, namely Virender Kumar while they were doing drug checking at Check Post Near Makkar Dhaba F-Block, Sirsa and recovery of 1100 grams of Ganja patti (leaves) was effected from him.

Learned counsel would contend that the petitioner was not named in the FIR and he was nominated on basis of the disclosure statement of co-accused Virender Kumar, who was arrested at the spot, alongwith the alleged contraband. He places reliance on the judgment in the case of **Tofan Singh vs. State of Tamil Nadu**, 2020 AIR (Supreme Court) 5592 to contend that the disclosure statement is inadmissible in evidence. The

petitioner is ready and willing to join the investigation and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to him.

Learned State counsel opposes the prayer of the petitioner on the ground that the co-accused Virender Kumar had disclosed that he had paid Rs.16,000/- to the petitioner for purchasing the contraband and on his asking co-accused Vicky Kumar handed over the contraband to him. The amount paid to the petitioner is yet to be recovered. Custodial interrogation of the petitioner is required in the instant case to recover the amount and to find the source of origin as also the entire chain of supply of contraband.

Heard.

It is apposite to make a reference to the order of Hon'ble The Supreme Court of India in the case of **Prabhulal vs. Central Bureau of Narcotics**, wherein the SLP (Crl.) 6722-2022 was dismissed vide order dated 14.12.2022, affirming the order of dismissal of anticipatory bail by Madhya Pradesh High Court, by observing thus:-

“We have heard learned counsel for the parties. We find no reason to grant pre-arrest bail to the petitioner as prayed for. The Special Leave Petition is, accordingly, dismissed.

The interim protection granted by order dated 11.10.2022 stands vacated in view of the dismissal of the special leave petition.

However, if the petitioner surrenders and apply for regular bail, the same may be considered by the Trial Court as expeditiously as possible on its own merits in accordance with law.”

Furthermore in the case of **State of Haryana vs. Samarth**

Kumar, 2022 LiveLaw (SC) 622, Hon'ble The Supreme Court of India has held thus:-

“7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents 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 conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into error in granting anticipatory bail to the respondents.

10. In view of the above, the appeals are allowed. The impugned orders are set aside. As a consequence, the Appellate –State is entitled to take steps, in accordance with law.”

Adverting to the facts of the case in hand, the name of the petitioner has surfaced based on the disclosure statement of co-accused, Virender Kumar, who was apprehended at the spot and recovery of the contraband was effected from him. He had categorically disclosed that for the said contraband he had paid an amount of Rs.16000/- to the petitioner, upon which, co-accused Vicky Kumar had supplied the same to him. The sole ground taken by the petitioner for grant of anticipatory bail in view of the judgment in the case of **Tofan Singh** (supra) that the disclosure statement of co-accused is inadmissible, has no force, as per the law laid

down by Hon'ble The Supreme Court of India in the cases of **Prabhulal** and **Samarth Kumar** (supra). Thus, the allegations against the petitioner call for a deeper probe, to unearth the modus operandi, source of origin, chain of supply and find out the involvement of other persons therein, so as to also eradicate the menace of drug proliferating, for which the custodial interrogation of the petitioner is required. The grant of pre-arrest bail in the present case shall be detrimental to the investigation.

The stringent provisions as contained in the statute, are to deal with the drug menace, plaguing the society, as the youth are being led on a path having deleterious effects, thereby destroying the very social fabric.

Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.

21.12.2022
gsv

(**AMAN CHAUDHARY**)
JUDGE

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