

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-52767-2022

Date of Decision: 16.11.2022

Avtar Singh

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM:HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr.Karanjeet Singh Brar, Advocate for the petitioner

Mr.Jaspal Singh Guru, AAG, Punjab

**ASHOK KUMAR VERMA, J.**

Notice of motion.

On the asking of this Court, Mr. Jaspal Singh Guru, AAG,  
Punjab accepts notice.

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 and 29 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 the petitioner and co-accused Prabhjot Singh. The petitioner alongwith Prabhjot Singh were coming on motor cycle but on seeing the police party, the petitioner 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.

Learned Counsel appearing for the petitioner, *inter alia*, submits that the petitioner was neither present at the spot as alleged in FIR nor any recovery has been effected from him. It is the case of the prosecution that police officials have secret information and they were in large number, so it is highly improbable that the petitioner can succeed in running away from the spot when so many police officials were present at the spot. The petitioner 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 petitioner has been specifically named in the FIR. Petitioner alongwith co-accused Prabhjot Singh were coming on motorcycle but on seeing the police party petitioner was able to flee away, though the polythene which was kept on the oil tank of the motorcycle 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. Besides that from the possession of the co-accused Prabhjot Singh, recovery of CARISOMA tablets was effected. Thus, it is a case falling within the ambit of commercial quantity as the quantity 1200 ml from 12 vials comes to 1475.16 grams. Learned counsel for the State submits that petition under Section 438 of the Cr.P.C. for grant of anticipatory bail filed by co-accused Sukhpreet Singh has been already dismissed by this Court vide order dated 29.10.2022 passed in CRM-M-49890-2022. Learned counsel further submits that custodial interrogation of the petitioner is required for finding out the source of contraband.

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 the petitioner and co-accused Prabhjot Singh by name. Motorcycle was intercepted, though the petitioner who was allegedly driving the motorcycle fled away. The polythene containing 12 vials had fallen down alongwith the mobile phone which was recovered. 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”.

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. 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 the above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)  
JUDGE

16.11.2022

MFK

*Whether speaking/reasoned* *Yes/No*

*Whether Reportable* *Yes/No*