

CRM-M-53528-2022

1

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

Sr. No.103

CRM-M-53528-2022

Date of decision : 21.12.2022

Mohammkad Rafik

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Talim Hussain, Advocate for the petitioner
Mr.Tanuj Sharma, 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.93 dated 23.3.2022, registered under Section 18-B of Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Nagina, District Nuh.

Briefly put, as per FIR, on the basis of secret information received from informer, after intimation to the higher officer, raid was conducted by officials of crime patrolling duty at the cottage of one Jamaluddin @ Jamlu, who was indulged in supplying of intoxicants substances (poppy husk) daily. Recovery of 198.200 kgs of Poppy Husk was effected and after due procedure, it was seized and the accused was arrested. Thereafter, statement of said Jamaludin was recorded, wherein he named the present petitioner as supplier.

Learned counsel would contend that the petitioner was not named in the FIR and his name has surfaced based on the disclosure

statement of main accused Jamaludin, who was arrested at the spot, alongwith the alleged contraband. There are three different disclosure statements given by co-accused, thus, they cannot be relied upon, as the same are also inadmissible in evidence. He places reliance on the judgment in the case of **Tofan Singh vs. State of Tamil Nadu**, 2020 AIR (Supreme Court) 5592. The co-accused Hamid Hussain, who is similarly placed to the petitioner has already been granted bail by this Court. 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 the petitioner.

Learned State counsel opposes the prayer of the petitioner on the ground that the recovery falls under the category of commercial quantity. The petitioner was stated to be the supplier, as evident from the statement of co-accused Jamaludin, who stated that the petitioner had sold the contraband to him. Custodial interrogation of the petitioner is required in the instant case to find the source of origin and 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

petitioner has been nominated in the present case based on the disclosure statement of co-accused Jamaludin, who was apprehended at the spot and recovery of 198.200 kgs of poppy husk, which falls under the category of commercial quantity, was effected. A perusal of all the three statements Annexures P-2 to P-4 reveal that co-accused Jamalu @ Jamaluddin had stated therein that on account of his poverty and greed of earning more money, he was taking the contraband from the petitioner and had become habitual of consuming and selling intoxicants. 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 argument seeking parity by the petitioner with co-accused Hamid Hussain is misconceived inasmuch as that he was enlarged on regular bail.

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