

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

**CRM-M-55021-2022
Date of Decision: 21.12.2022**

Niyamat @ Yamat Ali

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rohit Choudhary, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG, Haryana.

HARSH BUNGER J. (ORAL)

Prayer in the present petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.125 dated 12.05.2022 under Section 20 of Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity, 'NDPS Act'), registered at Police Station Pinagwan, District Nuh (Mewat).

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case on the basis of disclosure statement of one Iqbal, who had stated that he had purchased poppy husk from the present petitioner. It is submitted that infact, the name of Iqbal had also figured in a disclosure statement of the main accused Akhtar, who was apprehended with 38 kilogram – 860 grams of poppy husk. It is stated that

such disclosure statement of co-accused is legally inadmissible. Learned

counsel further submitted that co-accused Iqbal, on whose alleged disclosure statement the petitioner has been nominated as an accused, is already confined in District Jail Nuh in another case FIR No.46 dated 09.02.2022, under Section 20(B)(II)(c) of NDPS Act, registered at Police Station Punhana and it is unlikely that a person who is confined in jail, can purchase the alleged poppy husk from petitioner in the month of May, 2022, when the instant case FIR was registered.

Learned counsel for the petitioner has further submitted that the factum of false implication of the petitioner is further fortified from the fact that the recovery of aforementioned poppy husk was effected on the basis of secret information and his name did not figure either in the ruka sent by the police or in the FIR in question, coupled with the fact that nothing was recovered from him. He is not even involved in any other case of similar nature. It is also submitted that there is no independent witness to the alleged recovery and neither the mandatory provisions of NDPS Act have been complied with. He also submits that the petitioner is ready and willing to join investigation as and when required by the Investigating Agency or as directed by this Court/trial Court.

Learned counsel for the petitioner has placed reliance upon a judgment rendered by a co-ordinate Bench of this court in ***Avtar Singh v. State of Punjab, 2022(3) R.C.R. (Criminal) 334***, wherein anticipatory bail was granted to the petitioner therein, who was arraigned as an accused based on disclosure statement of main accused.

Upon issuance of notice in this case, learned State counsel appeared and has filed Status report by way of affidavit dated 20.12.2022 of Mr. Shamsher Singh, HPS, Deputy Superintendent of Police, Punhana, in

Court today, which is taken on record, subject to all just exceptions. Learned State counsel has opposed the bail of the petitioner by submitting that the offence is serious in nature and the petitioner is also involved in another case FIR No.129 dated 20.04.2021 registered under Section 25 of Arms Act.

I have heard learned counsel for the parties and also perused the paper book with their able assistance.

In paragraphs No.7 and 9 of the Status report dated 20.12.2022, it has been stated as under:

“ - x - x -

7. That it is also significant to mention here that co-accused Iqbal S/o Shoket was already lodged in jail in case FIR No.46 dated 09.02.2022 u/s 20B(II)(c)-61-85 NDPS Act, Police Station Punhana, who was summoned on production warrants and was joined investigation and he was arrested on 13.06.2022. He was also joined investigation in the present case and on his interrogation, he suffered his disclosure statement and admitted the commission of crime with his co-accused namely Niyamt @ Yamat (Petitioner). He has also further disclosed that the aforesaid contraband was brought by his co-accused (petitioner) and they are involved in selling the contraband. The source of bringing the contraband is known to his co-accused (petitioner). The petitioner is the main accused, who will disclose about the purchase of the contraband, which is sin in the society. The petitioner has committed heinous crime and he is not entitled for concession of bail. His intensive interrogation is very much required to nip this evil in the bud, so that society can be saved from the path of intoxication.

- x - x -

9. That the petitioner is a criminal person and he was

also involved in case FIR No.129 dated 20.04.2021 u/s 25-54-59 A. Act, P.S. Punhana and after completion of investigation, a challan has been submitted in the court of Ld. Area Magistrate on 01-09-2021 and the case is now fixed for prosecution evidence.

- x - x -”

A perusal of the above extract from the Status report dated 20.12.2022 would manifest that the petitioner is sought to be nominated in this case on the basis of disclosure statement only and apart from the alleged disclosure statement, there is no reference to any other material against him. Hon'ble the Supreme Court in ***Tofan Singh vs State of Tamil Nadu 2021(1) R.C.R. (Criminal) 1***, had observed as under:-

“152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.”

Further, another case FIR No.129 dated 20.04.2021 registered against the petitioner is not under the NDPS Act. Hon'ble the Apex Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another” 2012 (2) SCC 382***, stated as under:

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

A co-ordinate Bench of this court in *Avtar Singh v. State of Punjab, 2022(3) R.C.R. (Criminal) 334*, observed as under:

“6. The status report filed by the police reveals that the investigator arraigned the petitioner as an accused based on the disclosure statement of the main accused from whose possession the investigator had recovered the contraband. There is no other evidence collected at this stage to connect the petitioner with the main accused. Merely because the police want to know the source of poppy and thus seek custodial investigation is not justiciable because the evidence linking the petitioner is prima-facie, not admissible given the express bar placed by legislator under section 25 of Indian Evidence Act, 1872. Thus, there is no justification to deny bail...”

Having regard to the abovementioned facts and circumstances, this Court is inclined to grant the concession of anticipatory bail to the petitioner; especially considering the fact that he was not present at the place of occurrence and was not arrested and the instant case is one where he has been nominated solely on the basis of disclosure statement, the admissibility and veracity of which would be tested during the course of trial; thus, *prima facie* the involvement of petitioner in this case is a debatable issue to be considered during trial. There is no other case under NDPS Act against the petitioner. A perusal of Status report would reveal that there is no other evidence collected at this stage to connect the petitioner with the main accused. Moreover, the alleged recovery from the main accused (Akhtar) in this case is 38 kilogram – 860 grams of “poppy husk”, which is below the commercial quantity. As per Entry No.110 of the Schedule, the “*commercial quantity*” is above 50 kilogram. Thus, the rigors

of Section 37 of NDPS Act are not attracted.

In “*Sushila Aggarwal v. State (NCT of Delhi)*”, reported as **2020 (1) R.C.R. (Criminal) 833**, Hon'ble the Apex Court observed as under:

“54. In *Gudikanti Narasimhulu v. Public Prosecutor, 1978 (1) SCC 240* this court observed that:

"... Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorise impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law".

55. The reason for enactment of Section 438 in the Code was Parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 is a procedural provision concerned with the personal liberty of each individual, who is entitled to the benefit of the presumption of innocence. As denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438,

especially when not imposed by the legislature. In Sibbia, it was observed that:

"Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely. "

56. The interpretation of Section 438 that it does not encapsulate Article 21, is erroneous. This court is of the opinion that the issue is not whether Section 438 is an intrinsic element of Article 21: it is rather whether that provision is part of fair procedure. As to that, there can be no doubt that the provision for anticipatory bail is pro-liberty and enables one anticipating arrest, a facility of approaching the court for a direction that he or she not be arrested; it was specifically enacted as a measure of protection against arbitrary arrests and humiliation by the police, which Parliament itself recognized as a widespread malaise on the part of the police..."

Accordingly, the instant petition is accepted and it is ordered that the petitioner, in the event of his arrest, shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

It is made clear, in case, the petitioner fails to join the investigation or does not cooperate with the investigation then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an expression of opinion on the merits of case and the trial would proceed independently of the observations made in the present case, which are only for the purpose of adjudicating the present bail application.

The petition is accordingly disposed of.

21.12.2022

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No