

106 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-57019 of 2022(O&M)

Date of Decision: 07.12.2022

Madan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. J.K. Khetarpal, Advocate
For the petitioner.**

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 163 dated 24.12.2021, registered under Sections 21/ 29/ 61/ 85 of Narcotic Drugs and Psychotropic Substances Act (for brevity, the Act) at Police Station Shambu, District Patiala.

The counsel for the petitioner submits that the petitioner was not named in the FIR which was registered against co-accused Dinesh Kumar from whom the police is stated to have recovered 2 Kg of heroin. The counsel for the petitioner further submits that the petitioner was nominated as accused on the basis of the alleged disclosure made by said Dinesh Kumar to the effect that he procured the said heroin from the present petitioner who is resident of Rajasthan. The counsel for the petitioner further submits that admissibility and relevance of the said disclosure statement of

the co-accused Dinesh Kumar will be examined during trial and that petitioner is ready to join the investigation with the police.

The present petition is opposed by the State counsel who submits that 2 Kg of heroin (commercial quantity) was recovered by the police from co-accused Dinesh Kumar on 24.12.2021 who further named the present petitioner. The State counsel further submits that the petitioner is not entitled to get concession of anticipatory bail as per the provisions of Section 37 of the Act.

I have considered the submissions made by counsel for the parties.

2 Kg of heroin recovered from the possession of co-accused Dinesh Kumar comes under commercial quantity and as such rigors of Section 37 of the Act are applicable in the instant case. Further in the present case, the petitioner cannot take advantage of the decision in **Tofan Singh Vs. State of Tamil Nadu (2021)4 SCC 1** while seeking concession of anticipatory bail, perhaps he can take advantage of the ratio laid down in Tofan's case at the time of seeking regular bail or at the time of final hearing after conclusion of trial as has been held by **Hon'ble Supreme Court in Criminal Appeal No. 1005 of 2022, decided on 20.07.2022, State of Haryana Vs. Samarth Kumar.**

Further, in the light of the above, this Court is of the view that custodial interrogation of the petitioner is required for the proper and effective investigation of this case by the police.

Accordingly, the present petition is hereby dismissed being devoid of merits. However, any observations made hereinabove are not to be considered as expression of opinion on the merits of the case.

07.12.2022

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**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No