

CRM-M-57470-2022

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

Sr. No.106

CRM-M-57470-2022

Date of decision : 21.12.2022

Jasvir Kaur @ Jassi

.....Petitioner(s)

Versus

State of Punjab

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.AP Singh, Advocate for the petitioner(s)

Mr.Manipal Singh Atwal, DAG, Punjab

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.0238 dated 03.11.2022, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station City Moga, District Moga.

Briefly put, as per FIR, on the basis of secret information received, the police party had put a naka near Sacred Heart School, Moga. A white colour Cruze Car bearing registration No.HR-26BG-4271 was stopped, in which Baljinder Singh @ Jindri, Karamjit Singh @ Sahil, Balwinder Singh @ Ghaint and Amarjit Singh were found travelling. On conduct of search of the said car, 250 grams of Heroin wrapped in colored transparent envelop was recovered.

Learned counsel would contend that the petitioner was not named in the FIR and she was nominated based on the disclosure statements of main accused, who were 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. He further submits that in case the weight of the polythene bag is subtracted from the total weight, the same would render the actual contraband to be below the commercial quantity. 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 on the ground that the recovery falls under the category of commercial quantity. The petitioner was the supplier as evident from the statement of co-accused, who stated that they had bought it from the petitioner and even previously also they used to purchase heroin from her. There are three more FIRs lodged against the petitioner, bearing FIR No.24 dated 10.11.2022, under Section 21 NDPS Act, FIR No.95 dated 12.5.2022, under Sections 304, 201, 34 IPC and FIR No.65 dated 22.4.2021, under Section 61 of the Excise Act. 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.”

Facts as brought out in the present case are that the name of the petitioner has surfaced based on the disclosure statements of the co-accused,

Karamjit Singh @ Sahil, who alongwith other three co-accused were apprehended at the spot and recovery of 250 grams Heroin was effected from them. In their disclosure statements, the co-accused have specifically stated that even previously they had been purchasing heroin from the petitioner, as was bought from her this time, which was recovered from them. 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