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

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Date of decision: 13.02.2023

Baljinder Singh

.....Petitioner

vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. J.K. Singla, Advocate,
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.173 dated 14.11.2022 under Sections 15B, 25, 27 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sardulgarh, District Mansa.

Briefly stated the facts of the prosecution case are that on 14.11.2022, SI Gagandeep Kaur alongwith police party was on patrol duty. When they were about 2- ½ kilometer ahead from village Mirpur Kalan, one Zen car bearing Registration No. DL-9- CD-4917 was parked on the

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road. Three persons were in the car. On seeing the police party, they tried to ran away. Two persons succeeded to ran away from the spot. One person was apprehended. On enquiry, he disclosed his name as Gurlal Singh @ Gora son of Late Ajmer Singh son of Late Jang Singh, resident of Chotian. Recovery of 20 Kgs poppy husk was effected from the car. He was arrested in the present case.

On issuance of notice of motion, status report dated 16.01.2023 by way of affidavit of Gobinder Singh, Deputy Superintendent of Police, Sub-Division Sardulgarh, District Mansa, has been filed on behalf of the respondent-State, which is already on the record, wherein it has been stated as under: -

“5. That on 02.12.2022, accused Rusha Singh was arrested in the present case and as per the investigation from him and mobile verification, it was found that the exact name of accused who had absconded from the spot along with accused Rusha Singh is petitioner Baljinder Singh resident of Village Sukhchain (Haryana), as such, vide Zimni No.05, dated 02.12.2022, name of the petitioner was mentioned in the police record as Taljinder Singh @ Baljinder Singh resident of village Sukhchain (Haryana). It is further stated that the dope test report of accused Rusha Singh was also found positive.

6. That as per the report bearing No.2842/2022/Toxi/RTFSL/BTI/Pb. Dated 20.12.2022 given by the police of Regional Testing Forensic Science Laboratory, Bathinda, it was found mentioned therein that all the sample containing poppy husk contains “MECONIC ACID, MORPHINE, CODEINE, THEBAINE, PAPAVERINE & NARCOTINE”, which were found to be falling under the non-commercial quantity.

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x x x x

8. PAST ANTECEDENTS OF THE PETITIONER:

That it is submitted that as per police record, apart from present case FIR, following case FIR(s) were found to be registered against the petitioner and details of the same is given in the tabular form here as under: -

Sr. No.	FIR No.	Date	Under Section	Police Station	Status
1.	212	20.11.2006	15/16/61/85 NDPS Act	Badaguda, District Sirsa	Acquitted
2.	110	03.08.2007	15/61/85 NDPS Act	Audan, District Sirsa	Convicted

It is submitted that the petitioner is a habitual offender and is a past convict, as such, in order to break the drug nexus, custodial interrogation of the petitioner is required to the police and petitioner does not deserve the relief of grant of anticipatory bail or any other alternative relief from this Hon'ble Court.

9. ROLE OF THE PETITIONER: -

That from the investigation of the present case FIR and investigation of the co-accused persons, it was well established on record that chance recovery of 20 Kilogram of poppy husk was recovered from the boot space of Zen Car. However, as per investigation from co-accused persons and mobile phone call detail record, it was established that the person who succeeded to abscond from the spot was the petitioner Baljinder singh and the above recovered Zen car also belongs to the petitioner. However, it is stated that in order to ascertain ownership record of the above mentioned ZEN Car and to ascertain the source and supply chain of the contraband, custodial interrogation of the petitioner is required to the police, so that the drug nexus can be unearthed. Further it is stated that the petitioner is a habitual offender and is a past convict, as such, in case petitioner is granted with the concession of anticipatory bail

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there are chances of running of the petitioner from the trial of the case and tampering with the prosecution evidence. In these circumstances, petitioner does not deserve the relief of grant of anticipatory bail or any other alternative relief from this Hon'ble Court."

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case and has been nominated as an accused on the basis of disclosure statement of co-accused, namely Rusha Singh. He further submits that petitioner is ready and willing to join the investigation. Therefore, he may be granted the concession of anticipatory bail.

On the other hand, learned State counsel submits that 20 kgs of poppy husk was recovered from the boot space of Zen car and as per investigation from the co-accused persons and mobile phone call detail record, it has been established that person who succeeded to abscond from the spot was the petitioner and the above recovered Zen car also belongs to the petitioner and to ascertain the source and supply chain of the contraband, custodial interrogation of the petitioner is required so that the drug nexus can be unearthed. It has further been argued that petitioner is a habitual offender and is a past convict, as such he be not granted the concession of anticipatory bail.

I have heard learned counsel for the parties and perused the record.

In para 10 of the petition, the petitioner has made the following averments: -

"10. That except the present case/FIR against the petitioner

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that there is no other FIR is pending under NDPS Act and one FIR under NDPS Act has been registered against the petitioner in the year 2006 and in which he has been acquitted but particulars of FIR and judgment of acquittal is not available with petitioner and same be provided at the time of arguments if desired by this Hon'ble Court, as per information given by petitioner to undersigned counsel."

However, a perusal of the past antecedents of the petitioner, as have been reproduced above, the petitioner is involved in two other cases under the NDPS Act wherein in one case he has been acquitted and in the second case he has been convicted. Petitioner has only made reference to the case in which he has been acquitted and has not stated about the second case in which he has been convicted, in the petition. Therefore, there is concealment on the part of the petitioner.

It is a well-settled proposition of law that a person who does not approach the Court with clean hands and played fraud with the Court, is not entitled for any relief. Reference in this regard can be made to the judgments in ***Dalip Singh v. State of U.P. and others - JT 2009 (15) SC 201: (2010) 2 SCC 114*** and ***Amar Singh v. Union of India and others, WP(C) No.39/06 decided on 11.05.2011.***

As per law laid down by the Hon'ble Supreme Court in ***State of Madhya Pradesh v. Pradeep Sharma (2014) 2 Supreme Court Cases 171***, power exercisable under Section 438 Cr.P.C. is somewhat extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his/her liberty.

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Keeping in view the fact that recovery of contraband has been effected from the car of the petitioner, he absconded from the spot and he is a habitual offender, therefore, his custodial interrogation is required to unearth the drug nexus.

In view of the above, this Court is not inclined to grant anticipatory bail to the petitioner.

Dismissed.

13.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No