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

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Date of decision: 17.01.2023

Devinder Singh Bhatti

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Deepak Aggarwal, Advocate,
for the petitioner.

Mr. Adhiraj 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.183 dated 01.12.2022 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar Zira, District Ferozepur.

The present FIR has been registered against co-accused Daljeet Singh @ Jeeta who was apprehended by the police party on the basis of suspicion while he was coming in a car bearing No. PB-05-AP-5112. On checking of the car, recovery of 500 grams Heroin was recovered. Further perusal of the record shows that during investigation, co-accused Daljeet Singh @ Jeeta suffered a statement that he alongwith the present petitioner jointly purchased the recovered 500 grams Heroin and the source of Heroin is only known to the petitioner. He also disclosed that the car recovered in

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this case was also provided to him by the petitioner and as such name of the petitioner surfaced in this case.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He was not named in the FIR and has been nominated on the basis of disclosure statement of the co-accused. He further submits that the petitioner is ready and willing to join the investigation. Therefore, he may be granted the benefit of anticipatory bail.

Per contra, learned State counsel, on the strength of receipt of advance copy of the petition, submits that co-accused of the petitioner in his statement has submitted that he along with present petitioner jointly purchased the recovered 500 grams heroin and source of heroin is only known to the petitioner. He also disclosed that the car recovered in the present case was also provided to him by the petitioner. He further submits that the recovered contraband falls under the category of “commercial quantity” and as such provisions of Section 37 of the NDPS Act are attracted. He further submits that the petitioner has concealed the material facts from this Court as in para 6 of the petition it has been mentioned that the petitioner is involved in one more case i.e. FIR No.86 dated 13.07.2022 under Section 21 of the NDPS Act, registered at Police Station Zira, District Ferozepur, whereas three more cases have been registered against the petitioner, particulars of which are as under: -

- “1. FIR No.44 dated 16.04.2016 under Sections 336/506/148/149 IPC and Sections 25/27 of the Arms Act, registered at Police Station City Zira.
2. FIR No.4 dated 26.01.2020 under Sections 22/29 of the NDPS Act, registered at Police Station City Zira.

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3. FIR No.131 dated 07.10.2020 under Sections 336/323/341/506/34 IPC and Sections 25/27 of the Arms Act, registered at Police Station Zira.”

He further submits that since the petitioner is a habitual offender, he is not entitled to grant of anticipatory bail.

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

The anticipatory bail application filed by the petitioner before the Judge, Special Court, Ferozepur, was dismissed vide order dated 16.12.2022 with the following observations: -

“Since there are specific allegations that the applicant/accused was the person who alongwith the co-accused purchased the recovered Heroin and provided recovered car to co-accused Daljeet Singh @ Jeeta for transporting the said Herion, as such, at this stage, there is clear link of the applicant/accused with the recovered Heroin. Further more, the recovery effected in this case is 500 grams of Heroin, which falls under commercial quantity. Even as per the report of Chemical Examiner, which has been received in this case and is attached with report under section 173 Cr.P.C shows that the recovered contraband was Diacetylmorphine. As such the recovery of Heroin effected in this case falls under commercial quantity and as per section 37 of the NDPS Act, there is bar on granting regular bail in such cases. Accordingly, the applicant/accused is not entitled for regular bail and the present bail application moved by the applicant/accused stands dismissed and disposed of. Anything stated in this order shall have no bearing on the merits of the case in any manner. File be attached with the file of the trial.”

In ***State of Haryana vs Samarth Kumar, 2022 Live Law (SC)***

622, the Hon’ble Supreme Court held that the accused is not entitled for

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anticipatory bail only on the ground that no recovery was effected from the accused and he has been implicated on the basis of disclosure statement.

In ***Samrath Kumar's*** case (supra) the Hon'ble Supreme Court observed as under:-

*“In cases of this nature, the respondent 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 the conclusion of the trial. To grant anticipatory bail in case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”*

The petitioner is a habitual offender and he has intentionally concealed the factum of registration of aforesaid FIRs, pointed out by learned State counsel, in the petition. 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 ***Hari Narain v. Badri Das - AIR 1963 Supreme Court 1558, Welcome Hotel and others v. State of A.P. and others - (1983) 4 SCC 575, G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnataka and another - JT 1991(3) SC 12: (1991) 3 SCC 261, S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others - JT 1993 (6) SC 331: (1994) 1 SCC 1, A.V. Papayya Sastry and others v. Government of A.P. and others - JT 2007 (4) SC 186: (2007) 4 SCC 221, Prestige Lights Limited v. SBI - JT 2007(10) SC 218: (2007) 8 SCC 449, Sunil Poddar and others v. Union Bank of India - JT 2008(1) SC 308:(2008) 2 SCC 326, K.D.Sharma v.***

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SAIL and others - JT 2008 (8) SC 57: (2008) 12 SCC 481, G.Jayashree and others v. Bhagwandas S. Patel and others - JT 2009(2) SC 71 : (2009) 3 SCC 141 and Dalip Singh v. State of U.P. and others - JT 2009 (15) SC 201: (2010) 2 SCC 114. Moreover, the recovery in the present case falls under the category of “commercial quantity”, therefore, provisions of Section 37 of the NDPS Act are attracted. Hence, the petitioner is not entitled to the relief of anticipatory bail.

Dismissed.

(NAMIT KUMAR)
JUDGE

17.01.2023

R.S.

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No