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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1399-2023
Date of Decision: 12.1.2023

Naushad

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Deepkaran Dalal, Advocate for the petitioner

Mr.Munish Sharma, AAG, Haryana

…

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in FIR No.729 dated 19.11.2022 under Sections 20, 61, 85 of the NDPS Act registered at Police Station City Palwal, District Palwal, Haryana.

Learned counsel for the petitioner, *Inter alia,* contends that the petitioner is sought to be implicated in the present FIR on the basis of disclosure statement made by the co-accused. The petitioner was neither present at the time of alleged recovery nor any recovery has been effected from the petitioner. The petitioner has nothing to do with the offence. Nothing is to be recovered from the petitioner and as such no custodial interrogation is required. The petitioner is already ready and willing to join the investigation.

On the other hand, learned State counsel opposed the petition for grant of anticipatory bail to the petitioner. Learned counsel submits that the co-accused from whom Ganja Patti of 1.925 grams was recovered, has specifically disclosed that ganja patti was given to him by

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the petitioner, for selling the same and the co-accused has been indulging in the said illegal activity alongwith the petitioner for 5-6 months. Learned counsel further submits that the petitioner is a habitual offender as 6 more FIRs were already registered against the petitioner including 2 FIRs under the NDPS Act. In one of the FIR registered under Sections 13-3-67 of the Gambling Act, the petitioner has been convicted and fine was imposed. Therefore, his custodial interrogation is required for finding out the source of contraband.

I have heard learned counsel for the petitioner as well as learned State counsel and perused the record.

Perusal of the record shows that the allegation against the petitioner is that he supplied 1.925 kg of Ganja Patti to co-accused Jakurddin, who was apprehended. Co-accused made disclosure statement that the petitioner has been supplying Ganja Patti to him for the last about 5-6 months.

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 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*

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anticipatory bail to the respondent."

Moreover, his antecedents are also not good as he is already involved in six other cases inclujding 2 FIRs under the NDPS Act. It has been observed by the Hon'ble Supreme Court in case **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P, (1978) 1 SCC 240** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

In view of the discussion made above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

12.1.2023
MFK
Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*

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