

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

CRM-M-1218-2023

Date of decision : 11.01.2023

Madan Dass @ Madan Lal

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vikas Bishnoi Godara, Advocate
for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court by filing the present petition under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.155 dated 28.12.2022, under Sections 15(b) of NDPS Act, registered at Police Station Rori, District Sirsa.

As per the facts of the case when the complainant-ASI along with EHC Raghbir Singh and others were patrolling to prevent the drug addiction, they noticed one person coming from house holding a white colour plastic bag in his right hand. He was suspected carrying the narcotic. On asking, he disclosed his name as Gurjeevan Singh @ Gogi. He was given a notice under Section 50 of NDPS Act and on compliance of the same, search of the plastic bag was conducted in which poppy husk weighing 1 kg 400 grams was recovered. Accused-Gurjeevan Singh @ Gogi disclosed that he had brought the recovered poppy husk from Madan Lal son of Budh Ram. The case was registered for the offence

under Sections 15-B, 61, 85 of NDPS Act. Co-accused Gurjeevan Singh @ Gogi was arrested on spot. However, the name of the petitioner being the supplier of the contraband was disclosed by him. Petitioner apprehending his arrest, approached the Court of learned Additional Sessions Judge, Sirsa praying for grant of anticipatory bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide his order dated 31.12.2022. Aggrieved by the same, the petitioner has approached this Court praying for grant of anticipatory bail.

It has been vehemently contended by counsel for the petitioner that the alleged recovery of 1 kg 400 grams is not from the petitioner but from co-accused Gurjeevan Singh @ Gogi. He submits that the petitioner has been implicated in this case on the basis of disclosure statement of co-accused and hence the same is inadmissible in view of provisions of Sections 26 and 27 of the Indian Evidence Act. He has relied upon the judgment of the Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu, 2020 SCC Online SC 2022, and submits that in view of the law settled, the confessional statement of the co-accused cannot be considered as a substantiated piece of evidence and thus, false implication of the petitioner is evident. He further submits that even otherwise, recovery of the contraband weighing 1 kg 400 grams poppy husk is non-commercial quantity. He submits that in the facts and circumstances of the case, the petitioner deserves to be granted anticipatory bail.

Learned State counsel has opposed the contentions made by learned counsel for the petitioner and has stated that the petitioner is

facing prosecution in one more case of the like nature and his custodial interrogation is necessary for ascertaining the truth and as such he is not entitled to be released on anticipatory bail.

Heard.

After hearing counsel for the parties and perusing the record, it is evident that co-accused Gurjeevan Singh @ Gogi was arrested by the investigating agency on spot and poppy husk weighing 1 kg 400 grams was recovered from him. On his disclosure, it revealed that he had procured the recovered contraband from petitioner namely, Madan Lal. It is apparent from the record that the petitioner is facing prosecution in one another case under the NDPS Act and thus, the antecedents of the petitioner are seriously doubtful. The case is under investigation. This Court keeping in view the gravity of the offence cannot take into consideration the arguments raised by counsel for the petitioner that the recovered contraband is a non-commercial quantity.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and
(iv) where the accusation has been made with the object of
injuring or humiliating the applicant by having him so
arrested,

*Either reject the application forthwith or issue an interim
order for the grant of anticipatory bail.”*

XXXXXXXX XXXXXXXX XXXXXXXX

As per the law settled by the Hon'ble Supreme Court, in
Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while
granting anticipatory bail, the Court is to maintain a balance between the
individual liberty and the interest of society. However, the interest of the
society would also prevail upon the personal liberty. The relevant part of the
judgment is as follows:-

*31.In regard to anticipatory bail, if the proposed
accusation appears to stem not from motives of furthering
the ends of justice but from some ulterior motive, the
object being to injure and humiliate the applicant by
having him arrested, a direction for the release of the
applicant on bail in the event of his arrest would
generally be made. On the other hand, if it appears likely,
considering the antecedents of the applicant, that taking
advantage of the order of anticipatory bail he will flee
from justice, such an order would not be made. But the
converse of these propositions is not necessarily true.
That is to say, it cannot be laid down as an inexorable
rule that anticipatory bail cannot be granted unless the
proposed accusation appears to be actuated by mala
fides; and, equally, that anticipatory bail must be granted
if there is no fear that the applicant will abscond. There
are several other considerations, too numerous to
enumerate, the combined effect of which must weigh with
the court while granting or rejecting anticipatory bail.
The nature and seriousness of the proposed charges, the*

context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the

person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

Hon'ble Supreme Court in “*The State of Haryana VS. Samarth Kumar, 2022 LiveLaw(SC)622*” has held that in the cases like the present one, the accused may take advantage of Tofan Singh's case (supra) at the time of arguing regular bail application or at the time of final hearing after conclusion of trial.

In view of the overall facts and circumstances of the case, this Court finds no infirmity in the view taken by the learned Court below. Resultantly, the present petition, being devoid of any merits, is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

11.01.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No