

CRM-M-1835-2023
Date of Decision: 13.01.2023

..... Petitioner

.....Respondent

Present: Mr. Shobit Phutela, Advocate, for the petitioner.
Mr. P.S. Grewal, Deputy Advocate General, Punjab.

Prayer in the present petition is for the grant of anticipatory bail to the petitioner in a case FIR No.158 dated 04.10.2022, registered under Sections 2, 27, 29, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Anaj Mandi Patiala.

As per facts of the case, the FIR in question was lodged by ASI Jaspal Singh, wherein, it was alleged that when he alongwith his team was patrolling, he noticed that one un-turbaned youth aged about 32 years was coming on motorcycle and carrying carrot colour bag. However, after seeing the Police he threw away the bag and made an attempt to escape. The police party succeeded in apprehending him on the spot. The bag was also recovered. On asking he disclosed his name to be Gurdhyan Singh. The search of the bag was conducted after complying with the requisite provisions of NDPS Act. Recovery of 90 stripss of drug tablets Lamotil and 05 strips of Alprasafe was recovered. During interrogation, the accused deposed that the contraband was handed over to him by Sucha Singh i.e. the petitioner. Apprehending arrest, the petitioner approached the Judge Special

Court, Patiala for grant of anticipatory bail, who after hearing both the sides,

declined the same vide order dated 03.01.2023. Aggrieved by the same, the petitioner has approached this Court praying for grant of anticipatory bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that the petitioner is nowhere named in the FIR registered, however, subsequently, he has been implicated in this case on the basis of disclosure statement of co-accused Gurdhyan Singh. He submits that the disclosure statement of the co-accused is not admissible and thus, there is no evidence against the petitioner regarding his complicity in the present case. He submits that the petitioner is running a licensed chemist shop and thus, there is no illegality on his part. He submits that there is no recovery from the petitioner and hence, he deserves to be granted anticipatory bail.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner.

Heard.

It is evident that there is a heavy recovery of intoxicant from the co-accused Gurdhyan Singh. As per the provisions of NDPS Act, more than 20 ml of contraband recovered falls in the category of commercial quantity. The FSL report is yet awaited, however, *prima facie*, the recovery in the present case from the co-accused is a heavy one, as it has been disclosed by the co-accused that the contraband recovered was supplied to him by the petitioner. The case in hand is under investigation and thus, the petitioner at this stage cannot take the benefit of the fact that his name has been disclosed by the co-accused.

Hon'ble the Supreme Court in State represented by CBI Vs.

Anil Sharma, (1997) 7 SCC 187 has 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 ensconded with a favorable order under [Section 438](#) if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he 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 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 facts like no recovery was effected from him and that he was implicated on the basis of disclosure statement made by the main accused at the time of arguing regular bail application or at the time of final hearing after conclusion of trial.

The Hon'ble Apex Court in plethora of judicial precedents has time and again reiterated that while considering the anticipatory bail the Court is to take into consideration the factors like gravity of offence, chances of accused tampering with the evidence and probabilities of fleeing from justice etc. The Court should be circumspect about the impact of its decision on the society as well. The anticipatory bail is an extraordinary

discretion which can be exercised in the extraordinary circumstances. Weighing the facts and circumstances of the case on the anvil of law settled, this Court is of the opinion that the petitioner do not qualify for exercising the extraordinary power by this Court in their favour. Resultantly, the petition being devoid of any merit is hereby dismissed.

13.01.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No