

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-2559-2023 (O&M)

Date of decision: 18.01.2023

ANSHU

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S.K. Bishnoi, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG Haryana.

AMAN CHAUDHARY. J.

This is 02nd petition filed under Section 438 CrPC seeking anticipatory bail to the petitioner in case FIR No.160 dated 18.09.2022, registered under Section 15 of NDPS Act (Section 29 of the NDPS Act added later on) registered at Police Station Jakhal, District Fatehabad, Haryana.

As per the prosecution version, on 18.09.2022, a police party headed by ASI Raj Kumar on the basis of suspicion apprehended co-accused Satish Kumar and Anil Kumar with 8 kilograms of Doda Post contained in plastic bag carried by them. On interrogation, they suffered their respective disclosure statements admitting their guilt and disclosing that recovered contraband was supplied to them by petitioner Anshu (brother of co-accused Satish Kumar).

Learned counsel would contend that the petitioner was not named in the FIR and he was nominated on basis of the disclosure statements of co-accused Satish Kumar and Anil, who were arrested at the spot, alongwith the alleged contraband. He submits that the petitioner is innocent and has been falsely implicated in the present case. He has not been named in the FIR and no specific

role has been attributed to him. He places reliance on the judgment in the case of **Tofan Singh vs. State of Tamil Nadu**, 2020 AIR (Supreme Court) 5592 to contend that the disclosure statement is inadmissible in evidence. The petitioner is ready and willing to join the investigation and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to him.

On advance notice, learned State counsel puts in appearance and opposes the prayer on the ground that the co-accused, who had named the petitioner, had stated that the supplier of the contraband recovered from them was the petitioner. There are three other cases registered against the petitioner under the NDPS Act, out of which, in one case he has been convicted and sentenced for 04 years. The present is a second petition for grant of anticipatory bail, first having been withdrawn without liberty on 21.12.2022 bearing CRM-M-48683-2022 and the same is not maintainable in view of the judgment of this Court in the case of **Jasbir Singh Vs. State of Punjab**, CRM-M-18039-2018 decided on 01.06.2018. Custodial interrogation of the petitioner is required in the instant case to find the source of origin and the entire chain of supply of contraband.

Heard.

It is apposite to make a reference to the order of Hon'ble The Supreme Court of India in the case of **Prabhulal vs. Central Bureau of Narcotics**, wherein the SLP (Crl.) 6722-2022 was dismissed vide order dated 14.12.2022, affirming the order of dismissal of anticipatory bail by Madhya Pradesh High Court, by observing thus:-

“We have heard learned counsel for the parties. We find no reason to grant pre-arrest bail to the petitioner as prayed for. The Special Leave Petition is, accordingly, dismissed.

The interim protection granted by order dated 11.10.2022 stands vacated in view of the dismissal of the special leave petition.

However, if the petitioner surrenders and apply for regular bail, the same may be considered by the Trial Court as expeditiously as possible on its own merits in accordance with law.”

Furthermore in the case of **State of Haryana vs. Samarth Kumar**, 2022 LiveLaw (SC) 622, Hon’ble The Supreme Court of India has held thus:-

“7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents 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 conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into error in granting anticipatory bail to the respondents.

10. In view of the above, the appeals are allowed. The impugned orders are set aside. As a consequence, the Appellate –State is entitled to take steps, in accordance with law.”

Hon'ble The Supreme Court of India in plethora of judicial precedents has 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.

In the case in hand, the name of the petitioner has surfaced based on

the disclosure statements of co-accused, Satish Kumar and Anil, who were apprehended at the spot and recovery of the contraband was effected from them. They had categorically disclosed that the petitioner was the supplier of the said contraband recovered from them. The sole ground taken by the petitioner for grant of anticipatory bail in view of the judgment in the case of **Tofan Singh** (supra) that the disclosure statement of co-accused is inadmissible, has no force, as per the decisions of Hon'ble The Supreme Court of India in the cases of **Prabhulal** and **Samarth Kumar** (supra). Thus, the custodial interrogation of the petitioner is necessary so as to complete the chain of supply and also to ascertain the person who are involved in the trade of drugs. In the case, the petitioner is granted the concession of anticipatory bail then prejudice would be caused to the case of the prosecution.

The stringent provisions as contained in the statute, are to deal with the drug menace, plaguing the society, as the youth are being led on a path having deleterious effects, thereby destroying the very social fabric.

Moreover, this is a second bail petition and no change of circumstances have been brought forth.

Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

January 18, 2023

S.Sharma(syr)

Whether speaking/reasoned : Yes/No

Whether reportable : *Yes/No*