

104 IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-6362 of 2023(O&M)

Date of Decision: 21.02.2023

Gursewak Singh @ Sewak

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Anshul Baghla, Advocate  
For the petitioner.

Mr. C.L. Pawar, Addl. AG Punjab.

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KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 205 dated 25.08.2022, registered under Section 18(b) of Narcotic Drugs and Psychotropic Substances Act and Section 25 of Arms Act at Police Station Lambi, District Sri Muktsar Sahib.

The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. That FIR was registered against co-accused Ramandeep Singh from whom the police is stated to have recovered 5 kgs 500 grams of opium, 50 live cartridges of .32 bore and drug money worth Rs.52,500/-. The counsel for the petitioner further submits that the petitioner is nominated as accused on the basis of the alleged disclosure made by said Ramandeep Singh regarding his involvement in the drug trafficking. The counsel for the petitioner further submits that the admissibility and relevance of the said disclosure statement of co-accused

will be subject matter of trial and that the petitioner who is having no criminal history is ready to join the investigation with the police.

The present petition is contested by the State counsel, who has put in appearance having advance notice of the petition and submits that 5 kg and 500 grams of opium (commercial quantity), 50 live cartridges and drug money worth Rs.52,500/- were recovered by the police from co-accused Ramandeep Singh who further disclosed the name of the present petitioner. The State counsel further submits that in the present case the petitioner is not entitled to get concession of anticipatory bail in the light of the embargo provided under Section 37 of the Act. The State counsel further apprised the Court that the application filed by co-accused Manjit Singh @ Kuki for grant of anticipatory bail is dismissed by this Court vide order dated 21.11.2022 having CRM-M-54029 of 2022. However, the State counsel has not disputed the fact that the petitioner is having no criminal antecedents.

I have considered the submissions made by counsel for the parties.

The recovery of 5 kgs 500 grams of opium from the possession of co-accused Ramandeep Singh comes under commercial quantity and as such rigors of Section 37 of the Act are applicable in the present case. Further, in cases of this nature, the petitioner cannot take advantage of the decision in **Tofan Singh Vs. State of Tamil Nadu** (2021) 4 SCC 1, while seeking concession of anticipatory bail. However, the petitioner can take advantage of the ratio laid down in Tofan Singh's case (supra) at the time of seeking regular bail or at the time of final hearing after conclusion of trial, as

has been held by the Hon'ble Supreme Court in **CrI. Appeal No. 1005 of 2022**, decided on 20.07.2022 (State of Haryana Vs. Samarth Kumar).

In light of the above, this Court is of the view that the petitioner is not entitled to get benefit under Section 438(2) Cr.P.C. and rather his custodial interrogation is required for proper and effective investigation of the case by the police.

Consequently, the present petition is hereby dismissed being devoid of merits. However, any observations made hereinabove are not to be construed as an expression of opinion on the merits of the case.

**21.02.2023**

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**(KARAMJIT SINGH )  
JUDGE**

**Whether speaking/reasoned : Yes/No**

**Whether reportable : Yes/No**