

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

101

CRM-M-10008-2023 (O&M)

Date of decision: 28.03.2023

KARISHMA KUMRA

....Petitioners

Versus

STATE OF PUNJAB

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Naresh Kumar, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 438 CrPC seeking anticipatory bail to the petitioner in case FIR No.187 dated 06.12.2022, registered under Sections 21 and 22 of the NDPS Act registered at Police Station Sadar Hoshiarpur.

As per prosecution version, the police party nabbed a person coming on Activa scooter, on the basis of suspicion. She was apprised of her legal right by police official through L/C Daljit Kaur to be searched as the said police official had apprehension of having some intoxicant in her possession. The accused reposed faith in the said police official. As such, from the search of accused Geeta, 20 grams heroin and 510 intoxicant tablets were recovered. During investigation, it came out that accused Geeta used to take the said intoxicants from Krishma Kumra (petitioner herein).

Learned counsel would contend that the petitioner was not named in the FIR and she was nominated on basis of the disclosure statements of co-

accused Geeta, who was arrested at the spot, alongwith the alleged contraband. He has vehemently contended that the petitioner has been falsely implicated in the case. He submits that the disclosure statement of the co-accused is not admissible and thus, there is no evidence against the petitioner regarding her complicity in the present case. 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 her.

Status report by way of affidavit of Palwinder Singh, PPS, Deputy Superintendent of Police, Sub-Division City, District Hoshiarpur has been filed, which is taken on record. Reference is made to paras 2, 4, 5 and 7 by the learned State counsel.

He opposes the prayer on the ground that the petitioner is niece of co-accused Geeta and there is one more case registered under the NDPS Act against her. Co-accused Geeta had in her disclosure statement stated that the petitioner indulges in selling intoxicants and she had obtained the recovered intoxicant from the petitioner. He further submits that the 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.”

A reference is required to be made to the relevant paras of the status

report, which read thus:-

“2. That it is submitted that FIR No. 187, dated 06.12.2022, U/s 21/22/61/85 of ND & PS Act was registered at P.S. Sadar, Hoshiarpur against the accused Geeta on recovery of 510 intoxicated tablets and 20 grams heroine from accused Geeta. Subsequently offence U/s 29/61/85 of ND & PS Act was added to the present case and the petitioner was nominated in the present case vide DDR No.22, dated 08.12.2022.

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4. That it is submitted that during the investigation, the accused Geeta suffered confession statement that the petitioner is her niece and she is indulged in selling intoxicated substance and many cases have been registered against her. She purchased heroine and intoxicated tablets from the petitioner. Therefore, the petitioner was nominated in the present case and offence u/s 29/61/85 was added to the present case vide DDR No.22, dated 08-12-2022.

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5. That it is submitted that the police of P.S. Sadar, Hoshiarpur are conducting raids upon the house of the petitioner but she has fled her house fearing her arrest in the present case.

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7. That it is submitted that the petitioner is habitual offender and following cases have been registered against the petitioner:

i. FIR No.13, dated 20-01-2022, U/s 21/29/61/85 of NDPS Act was registered at P.S. City, Hoshiarpur against the petitioner.

8. That it is submitted that the petitioner is habitual offender and she is indulging in selling intoxicated substance and the accused Geeta purchased recovered intoxicated substance from the petitioner and as such the custodial interrogation of the petitioner is very much required for proper probe of the present FIR.”

In the case in hand, the name of the petitioner has surfaced based on the disclosure statement of co-accused, Geeta, who was apprehended at the spot and recovery of the contraband was effected from her. She had categorically disclosed that the petitioner was the supplier of the said contraband recovered from her. 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.

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

March 28, 2023

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>