

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

CRM-M-13700-2023

Date of Decision: 17.03.2023

Sunil Kumar @ Soni

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ajay Arora, Advocate and
Ms. Divya Narula, Advocate, for the petitioner.
Mr. B.S. Virk, Deputy Advocate General, Haryana.

Rajesh Bhardwaj, J.

The petitioner has approached this Court praying for grant of anticipatory bail in a case FIR No.16, dated 15.01.2023 registered under Sections 15, 29 of NDPS Act, 1985, at Police Station Ellenabad, District Sirsa.

As per facts of the case, on 15.01.2023 when the Police party was patrolling, they saw a person having a plastic bag being carried out on his shoulder. On seeing the police, he started walking briskly. On suspicion, he was apprehended and was given notice under Section 50 of NDPS Act for search of the bag being carried. On asking of the Police, he disclosed his name Pappu Ram son of Nathu Ram. On the search of the bag 2 kgs doda post was recovered from him. On the basis of the same, a formal FIR was registered and the investigation commenced. On the interrogation Pappu Ram disclosed that the contraband recovered from him was supplied by Sunil Kumar @ Soni son of Raj Kumar i.e. the petitioner, thus, he was also arrayed as an accused in the FIR. Apprehending arrest, the petitioner approached the Court learned Special Judge, Sirsa praying for grant of anticipatory bail, however, after hearing both the sides, the learned Court

declined the same vide order dated 09.02.2023. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of anticipatory bail.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the petitioner was not named in the FIR, however, on investigation, the co-accused arrested from the spot, namely, Pappu Ram made a disclosure about the petitioner and thus, the petitioner was named in the FIR. He has submitted that the disclosure statement made by the co-accused is not admissible evidence and thus, there is no substantial evidence against the petitioner. He has submitted that even otherwise the contraband recovered from the co-accused is marginally above the small quantity, which falls under the non-commercial category as per the provisions of NDPS Act and thus, the petitioner deserves to be granted anticipatory bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the petitioner is a habitual offender as he is facing prosecution in another FIR No.212, dated 05.07.2021 registered under Section 15 of the NDPS Act, and thus, he does not entitled for the anticipatory bail.

Heard.

As per the case of the prosecution, co-accused Pappu Ram was arrested by the Police on 15.01.2023 and 2 kgs doda post was recovered from the bag being carried by him. During investigation, he made a disclosure that he was supplied the contraband by Sunil Kumar @ Soni i.e. the petitioner. Thus, the petitioner was said to be the supplier of the contraband recovered from him. Learned State counsel has submitted before

this Court that the petitioner is a habitual offender as besides this case he is also facing prosecution in another FIR No.212 dated 05.07.2021 registered under Section 15 of NDPS Act. Though the quantity recovered from the co-accused is non-commercial, however, it is evident that the petitioner is also facing prosecution in one another case of the similar nature.

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 disintering 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 disintering 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.

17.03.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No