

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

103

CRM-M-15596-2023 (O&M)

Date of decision: 03.05.2023

Gurmukh Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Yashjot Singh Dhaliwal, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

1. This is 2nd petition filed under Section 438 of Cr.P.C. seeking anticipatory bail to the petitioner in case of FIR No.30 dated 02.04.2022, registered under Section 18 of NDPS Act at Police Station City Lakho Ke Behram, District Ferozepur.

2. Learned counsel contends that the petitioner was not named in the FIR and his name surfaced based on disclosure statement of co-accused-Sanjeev Roshan from whom, commercial quantity of contraband weighing 3 kgs of opium was recovered. He submits that the application for anticipatory bail filed by the petitioner was withdrawn on 13.02.2023, Annexure P-6 with liberty to surrender before the trial Court. However, as per a tracking report of the vehicle involved as obtained by co-accused, it was recovered from the house of the petitioner, thus, the 2nd bail application has been filed. Petitioner alleges false implication. While referring to para 17 of the petition, it has been stated that there is no other case registered or pending against the petitioner except the present case. He places reliance on the judgment in the case of **Tofan Singh vs. State of Tamil Nadu,**

(2021) 4 SCC 1 to contend that the disclosure statement is inadmissible in evidence. He is ready and willing to join the investigation and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to him.

3. Learned State counsel opposes the bail on the ground of the maintainability of the 2nd petition while relying on the judgment passed by the Division Bench of this Court in **Manjinder Kaur vs. State of Punjab**, CRM-M-40916-2022 decided on 30.01.2023. In this regard, the submission advanced is that the tracking report is also of April 2022, which cannot be termed to be a subsequent event. Still further, as against the averment made in para 17 of the petition that there is no case against the petitioner, it is submitted that there are three cases, wherein the petitioner has been involved, 2 of which are under the NDPS Act, in one commercial quantity of contraband was recovered from him when he was apprehended at the spot, while in the other non-commercial quantity was recovered from the petitioner and third case being under the Excise Act. He further submits that the previous petition was not withdrawn at the outset but after having argued the matter for some time, when the Court was not inclined to grant the relief. The recovery effected from the co-accused is commercial in nature and the petitioner is stated to have demanded the contraband recovered from the co-accused for further sale. Custodial interrogation of the petitioner is necessary so as to ascertain the chain of supply and also to find out the other culprits, who are involved in the trade of drugs. The investigation is going on and there is every possibility of the petitioner tampering with the evidence and fleeing from justice.

4. Heard.

5. 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.) 6744-2022 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.”

6. 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.”

7. In the case in hand, the name of the petitioner has surfaced based on the disclosure statement of co-accused, who was arrested with the alleged contraband. He had categorically disclosed that he had brought the same on the demand of the petitioner for selling it further. The sole ground taken by the

petitioner for grant of anticipatory bail 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 allegations against the petitioner call for a deeper probe, to unearth the *modus operandi*, source of origin, chain of supply and also to find out the involvement of other persons therein, so as to also eradicate the menace of drug proliferation, for which the custodial interrogation of the petitioner is required. The petitioner is involved in two more cases under the NDPS Act wherein he was apprehended at the spot and in one of which commercial quantity of contraband was recovered while in the other, non-commercial. The grant of pre-arrest bail in the present case shall be detrimental to the investigation, which is stated to be going on.

8. 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.

9. The Division Bench of this Court in the case of **Manjinder Kaur** (supra) observed and held that, "We have already held that second/subsequent/successive anticipatory bail application would not be maintainable where such an application has been dismissed by the Court on merits by passing a speaking order. Further qua the anticipatory bail application, it can be said that once a first bail application under Section 438 Cr.P.C. stands withdrawn, a second or subsequent bail application would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances has/have come about, further developments such as arrest of co-accused or main accused or bail granted to co-accused, different considerations, some more details, new documents or illness of the accused. It would also not be maintainable on a

plea or ground that the Court on the earlier occasion failed to consider any particular aspect or material on record or that any point then available to the accused was not taken, agitated or pressed before the Court. However, the second/subsequent bail application under Section 438 Cr.P.C. would be maintainable only if there is substantial material and substantive change in the fact situation and circumstances of the case due to subsequent events or in law.”

10. The first petition filed for anticipatory bail was withdrawn when it was on the verge of being dismissed on merits, the Court being not inclined, after having heard the arguments that were advanced. The ground taken for filing the 2nd bail application by the petitioner does not fall within the parameters as laid down in the aforesaid judgment.

11. The present petition is thus, dismissed being not maintainable and also on merits by applying the law laid down in the afore-referred judgments of Hon’ble The Supreme Court, to the facts and circumstances of the case as discussed in the foregoing paras.

(AMAN CHAUDHARY)
JUDGE

03.05.2023
S.Sharma(syr)

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No