

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

101

CRM-M-18726-2023 (O&M)

Date of decision: 03.05.2023

Darshan Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Prem Kumar, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY. J.

CRM-16657-2023

Allowed as prayed for.

CRM-M-18726-2023

1. This is 2nd petition filed under Section 438 of Cr.P.C. seeking anticipatory bail to the petitioner in case of FIR No.101 dated 13.09.2021, registered under Sections 22, 29 of NDPS Act at Police Station Tapa Mandi, District Barnala.

2. As per the case of the prosecution, on 13.09.2021, at about 6:30 PM, SI Davinder Singh received a secret information to the effect that co-accused Kamal Singh and Gora Singh are selling intoxicant tablets on their motorcycle bearing registration No.PB-32E-9745 and if a raid is conducted, they could be apprehended along with intoxicant tablets. Inspector Amrit Singh along with

police party conducted a raid at the disclosed place where co-accused Kamal Singh and Gora Singh were apprehended and from their motorcycle bearing registration No. PB-32E-9745, one plastic bag having 800 strips make Tramadol Prolonged Tablets Corlividol- 100 SR Tablet, each strip containing 10 tablets, total 8000 intoxicant tablets were recovered. At the instance of co-accused Kamal Singh, 2000 loose intoxicant tablets of white colour were also recovered and they were arrested. On 16.09.2021, during interrogation, co-accused Kamal Singh disclosed that he had bought the intoxicant tablets from Darshan Singh (petitioner herein).

3. Learned counsel contends that the petitioner was not named in the FIR. Co-accused Kamal in his disclosure statement has implicated the petitioner that they had purchased the recovered contraband, which is commercial in nature, from the petitioner. He however submits that though the previous petition was withdrawn on 15.03.2023, Annexure P-12, however, the present second petition is maintainable in view of the fact that the first petition was filed based on the contents of the FIR only, however, now challan has been presented against the co-accused, wherein there is no evidence against the petitioner. He is not involved in any other case under the NDPS Act. 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.

4. Learned State counsel opposes the bail on the ground that the earlier petition was not withdrawn simpliciter at the outset, however, learned counsel for the petitioner, who had appeared in the case, had argued the matter for some time

and only on the Court being not inclined to grant any relief, was the petition withdrawn. Besides the aforesaid, he submits that challan was presented on 05.03.2022 against the co-accused and the earlier bail petition was withdrawn 15.03.2023 thus that is not even a subsequent fact. He relies on the judgment of Division Bench of this Court in **Manjinder Kaur vs. State of Punjab**, CRM-M-40916-2022 decided on 30.01.2023 to submit that second bail petition is not maintainable on the ground taken by the petitioner. The recovery effected from the co-accused is commercial in nature and the petitioner is stated to have supplied the contraband recovered from the co-accused. Custodial interrogation of the petitioner is necessary so as to complete the chain of supply and also to ascertain the persons who are involved in the trade of drugs. In case, the petitioner is granted the concession of anticipatory bail the investigation regarding the petitioner would be hampered.

5. Heard.

6. 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.”

7. 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.”

8. In the case in hand, the name of the petitioner has surfaced based on the disclosure statement of co-accused, Kamal, who was arrested with the alleged contraband. He had categorically disclosed that he had purchased the said contraband from the petitioner. 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 proliferating, for which the custodial interrogation of the petitioner is required. The grant of pre-arrest bail in the present case shall be detrimental to the investigation.

9. 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.

10. 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.”

11. 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.

12. Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioner on merits and as also

being not maintainable. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

03.05.2023
S.Sharma(syr)

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