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

CRM-M-23740-2023

Date of decision : 11.05.2023

Balwinder Singh**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Shiv Kumar Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

*********RAJESH BHARDWAJ, J.**

Prayer in the present petition is for grant of anticipatory bail to the petitioner in case FIR No.56 dated 26.04.2023, under Sections 15, 25, 29, 61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Moonak, District Sangrur.

As per the facts of case, the police party received a secret information that Pargat Singh son of Baljit Singh is habitual of selling the poppy husk and he brings the same in Truck No.PB-13-N-0414 mark TATA from other states. He has employed one Mohan Singh @ Mohna as co-driver and if the *naqa* is laid, both can be arrested. On the basis of secret information, police registered the FIR and *naqa* was laid. During *naqa*, truck as informed was stopped and both the accused as named were arrested. On checking of the truck 03 quintal of poppy husk was recovered

from the same. During investigation, all the accused were arrested and their disclosure statement was recorded and the complicity of the petitioner also surfaced. On the basis of same, petitioner was also arrayed as accused. Apprehending the arrest, petitioner approached the Court of learned Judge, Special Court, Sangrur praying for grant of bail. However, after hearing both the sides, learned Judge, Special Court, declined the same vide his order dated 04.05.2023. Aggrieved by the same, petitioner is before this Court praying for grant of bail.

It has been vehemently contended by counsel for the petitioner that petitioner is neither named in the FIR nor there is any recovery effected from him. He submits that the name of the petitioner has surfaced in this case on the basis of disclosure statement made by the co-accused. He submits that the disclosure statement of co-accused is not an admissible evidence and thus, the petitioner has been falsely implicated in this case. He further submits that though the petitioner is the owner of the truck from which the contraband has been recovered, however, the same in itself is no ground to implicate the petitioner in this case as the petitioner has no role regarding the contraband recovered from the co-accused. He submits that the petitioner in the facts and circumstances of the case, deserves to be granted anticipatory bail.

Learned State counsel has submitted that the heavy quantity i.e. 03 quintal of poppy husk was recovered from the truck being driven by co-accused Pargat Singh when Mohan Singh @ Mohna was sitting as a co-driver and during investigation, the name of present petitioner surfaced and he was arrayed as accused in the present case. He further states that the custodial interrogation of the petitioner is very much necessary to unveil the

truth and as such, petitioner is not entitled to be released on pre-arrest bail.

Heard. This Court has heard counsel for the parties and perused the record. It is apparent from the case filed by the prosecution that the co-accused were arrested on the basis of secret information. The truck bearing No.PB-13-N-0414 was stopped and the recovery of 03 quintal of poppy husk was effected from the same. On the interrogation of the co-accused, they disclosed that the poppy husk recovered was brought by them at the instance of the petitioner. It is further revealed during investigation that the petitioner is the registered owner of the truck recovered during the search. Needless to say that the contraband recovered is heavy commercial quantity as per provisions of NDPS Act and thus, provisions of Section 37 of NDPS Act are attracted in this case.

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 his 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 does not qualify for exercising the extraordinary power by this Court in his favour. Resultantly, the petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

11.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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