

CRM-M-24409 of 2023

2023:PHHC:076635

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

CRM-M-24409 of 2023
Date of decision: 25.05.2023

Sonu

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Piyush Khanna, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

1. This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.99 dated 30.06.2022 under Sections 22/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Sadar, District Hoshiarpur.

2. According to the prosecution, on 30.06.2022 on the basis of suspicion a police party nabbed Sukhwinder Singh @ Sukha and from the right pocket of his lower one polythene containing 92 grams intoxicant powder was recovered. As such, present FIR was registered. During interrogation, co-accused Sukhwinder Singh @ Sukha named petitioner-Sonu as supplier of the said intoxicant to him.

3. Learned counsel for the petitioner submits that the petitioner is

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innocent and has been falsely implicated in the present case. He has not been named in the FIR and no specific role has been attributed to him. Petitioner's name came in the disclosure statement of co-accused, which is *per se* not admissible in evidence and no recovery has been effected from him. He further submits that co-accused Sukhwinder Singh @ Sukha has been granted bail by learned Judge, Special Court, Hoshiarpur, vide order dated 02.08.2022. He further submits that petitioner is ready and willing to join the investigation.

4. On receipt of advance copy of the petition, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner by submitting that petitioner is a habitual offender as he is involved in four more cases under the NDPS Act.

5. I have heard learned counsel for the parties and perused the record.

6. In ***State of Haryana vs Samarth Kumar, 2022 Live Law (SC) 622***, the Hon'ble Supreme Court held that the accused is not entitled for anticipatory bail only on the ground that no recovery was effected from the accused and he has been implicated on the basis of disclosure statement.

7. In ***Samrath Kumar's*** case (supra) the Hon'ble Supreme Court observed as under:-

*“In cases of this nature, the respondent 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 the conclusion of the trial. To grant anticipatory bail in case of this nature is*

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not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondent.”

8. The petitioner has also intentionally concealed the factum of registration of three other cases against him under the NDPS Act. Petitioner is a habitual offender as all the other four cases have also been registered under the NDPS Act against him.

9. So far as contention of the petitioner that co-accused has been granted bail is concerned, he was in custody since 30.06.2022 and has been granted interim bail till receipt of the FSL report, whereas petitioner is yet to join the investigation.

10. In ***Bal Krishan Fauzdar v. State of Haryana 2018 (1) RCR Criminal 789***, it is held by a Co-ordinate Bench of this Court in para No. 8 as under: -

“.....It is well settled that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.”

11. The law laid down in this judgment is fully applicable to the facts of the case in hand.

12. In view of the above, petitioner is not entitled to concession of anticipatory bail as his custodial interrogation is required.

13. Dismissed.

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14. Nothing observed hereinabove shall be construed as an expression of opinion on the merits of the case.

25.05.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No