

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

105

CRM-M-26066-2023

Date of decision: 22.05.2023

Karnail Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Kuldip Singh, Advocate for the petitioner

Mr. M.S. Nagra, AAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.59 dated 30.03.2022, registered under Section 18 of NDPS Act (Section 29 of NDPS Act added later on), at Police Station City Jalalabad, District Fazilka.
2. As per the prosecution version, on 30.03.2023, co-accused Amrinder @ Deepu was arrested with 300 grams of opium, which he kept in his possession without any licence or permit. During investigation, he suffered a disclosure statement that the said contraband was procured by him from the petitioner.
3. Learned counsel would contend that the petitioner was not apprehended at the spot. It is the co-accused namely Amrinder @ Deepu, who had named him in his disclosure statement, from whom non-commercial quantity of contraband was recovered. He has vehemently contended that the petitioner has been falsely implicated in the case. No recovery has been effected from him. He

further submits that the petitioner is not involved in any other case. He submits that the disclosure statement of the co-accused is not admissible and thus, there is no evidence against the petitioner regarding his complicity in 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. The petitioner is ready and willing to join the investigation and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to him.

4. Learned State counsel brought to the notice of this Court that the petitioner is involved in one more case in FIR No.36 dated 09.04.2020, under Section 18/61/85 of NDPS Act, P.S. Veeroke, District Fazilka. He opposes the prayer on the ground that the co-accused, from whom the recovery of the contraband was effected had named the petitioner stating that the said contraband was procured from the petitioner. Custodial interrogation of the petitioner is required in the instant case to find the source of origin, the entire chain of supply of contraband and the other drug peddlers involved, if any. There is every possibility of the petitioner fleeing from justice.

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 present petition has been filed stating that the name of the petitioner has surfaced based on the disclosure statement of co-accused Amrinder @ Deepu, who was apprehended at the spot and recovery of the 300 grams opium has been effected from him. He had categorically disclosed that the said contraband recovered was procured by him from the petitioner. There is one more case under the NDPS Act against the petitioner, wherein non-

commercial quantity was recovered from him. The sole ground taken by the petitioner for grant of anticipatory bail that the disclosure statement of co-accused is inadmissible and has no force, in view of the decisions of Hon'ble The Supreme Court in the decisions in **Prabhulal** and **Samarth Kumar** (supra). The custodial interrogation of the petitioner is necessary so as to complete the chain of supply and also to ascertain the persons who may be involved in this nexus. In case, the petitioner is granted the concession of anticipatory bail then prejudice would be caused to the case of prosecution.

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. Keeping in view the facts and circumstances and the judgments referred to above, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

22.05.2023
M.Kamra

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