

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

208

CRM-M-27319-2022

Date of decision: 12.10.2023

Sanjay Kumar

...Petitioner

Versus

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Amit Kumar Saini, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.604, dated 26.12.2021, registered under Sections 20(c) and 18 of the NDPS Act, 1985(hereinafter referred to as “the Act”), (Section 29 of the Act, 1985 added later on) at Police Station Civil Line Kaithal, District Kaithal.

2. The factual matrix of the case as per the present FIR are that on 26.12.2021, when in connection with checking of miscreants and suspected vehicles, the investigating officer, along-with other officials were present at Kaithal-Karnal bypass Chowk. An informer gave them secret information that accused Neeraj is involved in the sale of ‘ganja phool patti’ at his rented house and could be apprehended with the same. A report under section 42 of the Act was prepared and thereafter, the police party reached the house of Neeraj, where two persons were sitting in the store and putting the weighted

bundles in the plastic bags and a large quantity of those were lying tied with tape. The police officials apprehended them who disclosed their identity as Neeraj and Jitender Kumar. After giving a notice under Section 50 of the Act, they gave their consent to be checked by a gazetted officer. On search of said house, nine bags were found and on checking the same, it was found to be ganja phool patti as also a polythene bag, containing opium on the person of Jitender Kumar was recovered. On weighing the opium and ganja phool patti bags, they came to be 405 grams and 53 Kg 520 grams respectively including the weight of the bags.

3. Learned counsel contends that neither the petitioner was arrested at spot nor any recovery was effected from him and that only on the basis of disclosure statement of co-accused Neeraj and Jatinder Kumar, he was nominated on 29.12.2021. He relies on **Tofan Singh vs. State of Tamil Nadu**, (2021) 4 SCC 1 to submit that such evidence is inadmissible in law and since, no recovery has been effected from the petitioner, he is entitled to grant of anticipatory bail. He is ready and willing to join the investigation and cooperate with the investigating agency.

4. Learned State counsel opposes the prayer on the ground that commercial quantity of contraband was recovered from the co-accused, Neeraj, on basis of secret information that he was involved in the business of ganja phool patti and used to sell it at his rented house, was apprehended alongwith co-accused Jitender with 9 plastic bags and a transparent polythene bag containing 53 kg 520 g ganja phool patti and 405 g of opium. The petitioner is involved in 03 more cases besides the present case and

CRM-M-34362-2023, seeking anticipatory bail in one of them, was dismissed by this Court on 19.07.2023. He refers to the status reports dated 26.04.2023 and 19.09.2023, filed by Vivek Chaudhary, HPS, Deputy Superintendent of Police, HQ Kaithal and Umed Singh HPS, (HQ) Deputy Superintendent of Police, Kaithal respectively to submit that after the interim anticipatory bail by this Court, the petitioner had not cooperated and thus, the prayer to dismiss the present petition was made. The petitioner was specifically named by the aforesaid co-accused to be a supplier of the contraband recovered from them. The case is still being investigated and to find out the source and delivery of the contraband and recover the amount obtained by him, the custodial interrogation of the petitioner is required. There is every apprehension of the petitioner repeating the offence, fleeing from justice and tampering with the evidence. He had been involved in other cases, including under the Act.

5. Heard the learned counsel and perused the file.

6. It is apposite to make a reference to the order of Hon'ble The Supreme Court 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. Though, there is no dispute that the name of the petitioner had surfaced in the disclosure statement of the abovementioned co-accused, however, in this context the decision of Hon’ble The Supreme Court in the case of **State of Haryana vs. Samarth Kumar**, 2022 (3) R.C.R. (Criminal) 991 is relevant to refer to, which reads 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 Appellant–State is entitled to take steps, in accordance with law.”

8. Special Leave to Appeal (Crl.) No. 9680/2022 filed by the accused titled as **Gurpreet Singh vs. State of Punjab**, was dismissed by Hon’ble The Supreme Court on 07.11.2022, wherein this Court by observing that commercial quantity of contraband was recovered from his co-accused and referring to the decision in the case of **Samarth Kumar** (supra) had dismissed the petition for grant of anticipatory bail, even though it being a case involving the petitioner on the basis of disclosure statement and he relying on the judgment in **Tofan Singh** (supra).

9. That since this Court vide order dated 15.07.2022 had granted the petitioner-Sanjay Kumar interim anticipatory bail with direction to join investigation, a status report that was called for, was filed and as is apparent therefrom he did not cooperate with the investigating agency. The relevant portion thereof is deemed necessary to be referred to, which reads thus:

“Both the accused Neeraj and Jitender Kumar disclosed the name of a person namely Sanjay in their disclosure statement who has received the money for purchasing the ganja phool patti and was stated himself to be resident of Barwala and Sanjay has provided the ganja phool patti to the accused persons from the Pehowa Juggi wale and both the accused known the above said Sanjay by face and both the accused can apprehended the above said Sanjay to the police while visiting at the place of Sanjay at Pehowa and Barwala and thereafter both the accused along with the case property produced before the Ld. Illaka Magistrate Kaithal and the section 29 NDPS Act has been added and the accused Neeraj got recovered a motorcycle bearing no. HR09F-5085 to be used by the accused Neeraj for the smuggling of ganja phool patti and opium and the mobiles which has been used by the accused persons for getting the conversation with the other accused be also taken in to possession by the police and the same has been deposited with the MM Police station Civil Line Kaithal and after completion of the investigation of the case report U/s 173(2) Cr.P.C. has been submitted before the court and the arrest of co-accused Sanjay son of Atru Ram resident of Kanoh now resident of Kisan Colony Barwala, Distt. Hisar is pending in the present case and the petitioner Sanjay is not co-operating with the investigation agency and is not disclosing the facts regarding the amount which has been received by the petitioner Sanjay from the accused Neeraj & Jitender and hence the custodial interrogation of the petitioner is required in the present case for getting the recovery of narcotic amounts. The Zimini report dated 17.10.2022, 20.10.2022, 27.10.2022 and 31.10.2022 of asking the question and the answer given by the petitioner

to the investigation officers during the investigation are annexure 1 to 4.”

5. That the contents of the para no.5 of the petition are wrong and denied. The petitioner Sanjay is not co-operating with the investigation agency and is not disclosing the facts regarding the amount which has been received by the petitioner Sanjay from the accused Neeraj & Jitender and hence the custodial interrogation of the petitioner is required in the present case for getting the recovery of narcotic amounts.

6. That the contents of the para no. 6 of the petition are wrong and denied. The petitioner is an habitual offender and the petitioner has been implicated in the FIR no. 109 dated 03.03.2021, U/s 21-B/61/85 NDPS Act P.s. Barwala Hisar and in the FIR No. 350, dated 15.06.2021, U/s 20-B/61/85 NDPS Act, P.S. Barwala on the basis of the true facts and the alleged complaint moved by the petitioner against the police officials are false and concocted one and has been moved just to create a deffence in his favour.

11. That the contents of the para no. 11 of the petition are wrong and denied. If this Hon’ble court is pleased to grant the concession of anticipatory bail to the petitioner, then there is reasonable apprehension that the petitioner may abscond, tempers with the evidence and flee from justice by misusing the concession of anticipatory bail.”

Further, another Status report, dated 19.09.2023, was called for by this Court with regard to specific role of petitioner, call details to establish his connection/involvement with the co-accused, the relevant portion thereof reads thus:

“2. ...The customer acquisition form (CAF) of aforesaid mobile numbers are Annexure RX, RY & RZ and the call detail record (CDR) are annexure R1, R2 & R3 show that the petitioner/accused was having constant and continuous in touch with co-accused Neeraj and both have talked with each other from 01.12.2021 to 26.12.2021, 109 times. So they were having close relationship with each other.

3. That as the investigation and the disclosure statement (already stated in para no.2 of the preliminary submission at page no. 16 of main reply) both co-accused Neeraj & Jitender used to purchase the contraband of Ganja Phool Patti from the petitioner/accused who has received the money for aforesaid contraband.

5. That in compliance of the by the Hon'ble High Court, the petitioner has joined the investigation from 17.10.2022 to 31.10.2022, however the petitioner is not cooperating with the investigating agency and is not disclosing the facts regarding the amount which has been received by petitioner Sanjay from co-accused Neeraj and Jitender.

6. That in view of the facts and circumstances highlighted herein above, the custodial interrogation of petitioner accused is imperative to unearth the truth, for getting the recovery of narcotic money effected.”

10. In the case at hand, though the name of the petitioner did not figure in the FIR, however, serious allegation of and selling intoxicant substances, are levelled against him and huge quantity of contraband i.e. 9 plastic bags and a transparent polythene bag containing 53 kg 520 g ganja phool patti and 405 g of opium has been recovered from his co-accused, apprehended at spot based on secret information, which falls in the category of commercial quantity, which they had been provided with by the petitioner. During the investigation, it was found that the petitioner and his co-accused were constantly making calls to each other prior to the day of arrest, a total of these being 109 between 01.12.2021 and 26.12.2021. The amount has also been alleged to have been paid by the co-accused to the petitioner on account of purchase of contraband from him. The custodial interrogation of the petitioners is stated to be necessary to unearth the nexus of smuggling, in which they are indulging and also to ascertain the involvement of other persons.

11. There is involvement of the petitioner in other criminal cases as well, including under the Act. The anticipatory bail filed by him in one of the FIRs, wherein also he was implicated on basis of disclosure statement, was dismissed by this Court vide order dated 19.07.2023, the relevant part whereof reads thus:

“It may be noticed that recovery has been effected from the co-accused Kuldeep Singh on the basis of the secret information received and as per the disclosure statement of the said co-accused Kuldeep Singh, he has purchased the contraband recovered from the petitioner hence, the custodial interrogation of the petitioner is necessary to find out the truth as to from where the said contraband was purchased by the petitioner which was further sold to the co-accused Kuldeep Singh.

It is a conceded position that the petitioner is already facing two more cases relating to the violation of NDPS Act but though, he has already secured the bail in those cases but the allegations in the present case have come during the period when the petitioner was on bail in the other cases, which fact shows that the petitioner has not mended his ways and is still indulging in these banned activities. Further, qua the argument of the learned counsel for the petitioner that the petitioner has been falsely implicated in the present case cannot be believed as the learned counsel for the petitioner has not been able to point out as to who is inimical to the petitioner so as to involve him in a false case.”

12. The submission for grant of anticipatory bail made that there is only disclosure statement of co-accused against the petitioner, which is inadmissible, has no force, in view of the facts enumerated hereinabove and the decisions of Hon'ble The Supreme Court in the cases of **Gurpreet Singh, Prabhulal and Samarth Kumar** (supra).

13. Hon'ble The Supreme Court in **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, while expounding the law on anticipatory bail relied on the parameters evolved by the

Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980)

“i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

16. In cases where serious allegations have been alleged and the truth needs to be elicited from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail, were the observations made by Hon'ble The Supreme Court in **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268.

17. The foregoing facts and circumstances reveal that the element of criminality cannot be ruled out, and the investigating agency has not been able to elicit the truth as well as the modus operandi during the period, when on the direction of this Court, the petitioner had joined investigation, whereafter the learned State counsel has prayed for the requirement of custodial interrogation of his, since the thorough investigation of the case could not be conducted with the petitioner having been couched with comparative safety of pre-arrest bail and many loose ends and gaps appear to have been still left. There is also an apprehension expressed of him re-offending, fleeing from justice, tampering with evidence, coupled with his previous involvement in similar offences and this Court having dismissed his prayer for grant of anticipatory bail in one of those, thus, the present case is found to be meritless, viewing it in light of the afore-referred judgments. Resultantly, this petition stands dismissed.

18. The observations made hereinabove are meant only for the purpose of deciding the present petition and in no manner are to be construed as an expression of opinion on the merits of the case.

(AMAN CHAUDHARY)
JUDGE

12.10.2023
Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No