

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27281 of 2023(O&M)
Date of Decision: 30.05.2023

Manpreet Singh @ Manna

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Argued by:- Mr. Rajiv Kumar Saini, Advocate
For the petitioner.**

Mr. Hakam Singh, AAG Punjab.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 230 dated 13.08.2022, registered under Sections 21-C and 29 of Narcotic Drugs and Psychotropic Substances Act (for brevity, the Act) at Police Station Batala, District Gurdaspur.

2. The allegations in nutshell are that police apprehended co-accused Gagandeep and Sunny Masih both of whom were travelling on a motor cycle on 13.08.2022 and on their checking 260 grams of heroin and drug money worth Rs.40,000/- was recovered from Gagandeep who was driving the motor cycle and on search of Sunny Masih who was sitting on the pillion seat, 270 grams of heroin was recovered by the police. The name of the petitioner surfaced in the disclosure statements made by aforesaid

Gagandeep and Sunny Masih. Resultantly, the petitioner is nominated as accused.

3. The counsel for the petitioner, *inter alia*, contends that the petitioner is falsely implicated in the present case on the basis of alleged disclosure statements made by the co-accused. The counsel for the petitioner further submits that the said disclosure statements will be tested during trial. It is further contended that the petitioner is having no criminal history under the Act. The counsel for the petitioner has further contended that as the petitioner is having no criminal antecedents and is not a habitual offender, the law laid down by Hon'ble Apex Court in **State of Haryana Vs. Samarth Kumar**, 2022(3) RCR(Cr.) 991 is not applicable to the instant case. The counsel for the petitioner further submits that the petitioner is ready to join the investigation with the police.

4. The present petition is resisted by the State counsel who submits that commercial quantity of contraband has been recovered from co-accused Gagandeep and Sunny Masih and the name of the petitioner surfaced in their disclosure statements. The State counsel further submits that no doubt the petitioner is having no criminal history under the Act, the petitioner cannot take benefit of decision of Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1**. In support of his contentions, the State counsel referred to the ratio laid down in Samarth Kumar's case (*supra*). The State counsel further submits that the custodial interrogation of the petitioner is necessary for proper investigation of this case.

5. I have considered the submissions made by counsel for the parties.

6. There is no doubt that the FIR in this case was registered against co-accused Gagandeep and Sunny Masih from whom the police recovered commercial quantity of heroin and as such strict provisions of Section 37 of the Act are applicable to the instant case. The name of the petitioner surfaced in the disclosure statements made by co-accused Gagandeep and Sunny Masih. Admittedly, the petitioner is not a habitual offender and is not facing any other criminal case under the Act. The contention of the counsel for the petitioner is that as the petitioner is not habitual offender, the law laid down by the Hon'ble Supreme Court in **Samarth Kumar's case** (supra) is not applicable to his case. From the perusal of the judgment passed in **Samarth Kumar's case** (supra), it is clear that State filed two appeals against the orders passed by the High Court granting pre-arrest bail to two accused persons. It is apparent that only one of the said two accused persons was habitual offender but both the appeals filed by the State were allowed and the orders passed by the High Court granting pre-arrest bail to both the accused were set aside. In the given circumstances, the argument forwarded by the counsel for the petitioner that the law laid down in **Samarth Kumar's case** (supra) is applicable only in case of habitual offenders is not tenable.

7. The relevancy and admissibility of the disclosure statements made by co-accused against the present petitioner cannot be considered at this initial stage in the light of law laid down in **Samarth Kumar's case** (supra). Further, the embargo provided in Section 37 of the Act is also attracted to the instant case. Furthermore, the recovery effected from the co-accused being of commercial quantity of heroin, this Court is of the view

that the custodial interrogation of the petitioner is necessary for proper and effective investigation of the case.

8. In light of the above, the present petition is hereby dismissed. However, observations made hereinabove are not to be construed as opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

30.05.2023
Jiten

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