

CRM-M-30773-2023

-1-

101

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

\*\*\*\*

CRM-M-30773-2023

Date of Decision: 12.07.2023

Gurwinder Singh @ Gindri

..... Petitioner

Versus

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. Gagandeep Singh Virk, Advocate for the petitioner.

\*\*\*\*

**JASGURPREET SINGH PURI, J. (ORAL)**

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 FIR No.89, dated 28.08.2022 under Sections 15, 61 & 85 of the NDPS Act (Sections 15-C & 29 of the NDPS Act added later on), registered at Police Station Bilga, Jalandhar Rural.

2. Learned counsel for the petitioner has submitted that it is a case where the name of the petitioner was disclosed on the basis of the disclosure statement made by the co-accused, namely, Resham Singh from whom according to the FIR, there was an alleged recovery of 20 kgs. of *Poppy Husk* and thereafter as per the police there was a recovery of 105 kgs. of *Poppy Husk* from the house of the petitioner. He further submitted that the place from where the alleged recovery of 105 kgs. of *Poppy Husk* was made, does not belong to the petitioner nor it is in the name of the petitioner and the petitioner has been falsely implicated on the basis of disclosure statement made by the co-accused, and therefore, he may be considered for grant of the anticipatory bail.

3. On the other hand, Mr. Sarabjit Singh, DAG, Punjab has stated that he has received an advance copy of the present petition and has gone through the same and has also got instructions from ASI Dalwara Singh, who is present in Court today. He further submitted that in pursuance to the order passed by this Court on 19.06.2023 he has specific instructions to state that there has been a recovery of 105 kgs. of *Poppy Husk* from the house of the petitioner although the petitioner may not be the owner of the house but the house is in the possession of the petitioner. He also submitted that it is a case where the petitioner is a habitual offender and is involved in as many as 3 more cases under the NDPS Act and during the custodial investigation, the chain has to be established as to from where he got the *Poppy Husk* was obtained as there has been a huge recovery of more than 1 quintal from the house of the petitioner. He further submitted that in view of the above and especially in view of the bar contained under Section 37 of the NDPS Act, the petitioner is not entitled for the grant of anticipatory bail and rather for the purpose of elicitation of truth and to complete the chain and to establish the source from where the *Poppy Husk* had come, the custodial investigation of the petitioner is required.

4. I have heard the learned counsels for the parties.

5. It is a case where the claim of the petitioner is that the main accused in the present case is Resham Singh and on the basis of the disclosure statement made by the co-accused that his name has been nominated, and therefore, he is entitled for the grant of anticipatory bail and on the other hand, it is a case of the learned State counsel that in pursuance of the investigation which was conducted in the main case pertaining to the

CRM-M-30773-2023

-3-

co-accused, there had been a huge recovery 105 kgs. of *Poppy Husk* from the house of the petitioner and the petitioner is in possession of the house. The learned State counsel has also specifically stated that the petitioner is involved in as many as 3 more cases pertaining to the NDPS Act. The plea raised by the learned DAG, Punjab that in order to establish the source of the *Poppy Husk*, the custodial investigation of the petitioner is required, does carry weight and cannot be ignored. So far as the plea raised by the learned counsel for the petitioner that name of the petitioner was nominated on the basis of disclosure statement of the co-accused is concerned, the Hon'ble Supreme Court in "*State of Haryana Vs. Samarth Kumar*", 2022(3) RCR (Criminal) 991, held that such a plea may be available for deciding the regular bail but not anticipatory bail.

6. After hearing learned counsel for the parties and considering the aforesaid gravity of offence and also the fact that the learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of the NDPS Act, this Court does not deem it fit and proper to grant anticipatory bail to the petitioner.

7. Consequently, finding no merit in the present petition, the same is hereby dismissed.

8. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

12.07.2023

Bhumika

(JASGURPREET SINGH PURI)  
JUDGE

- |                               |        |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable:        | Yes/No |