

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

205

CRM-M-33573-2022 (O&M)

Date of decision: 08.02.2023

HAPPY

....Petitioner(s)

Versus

UT CHANDIGARH

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Shakinderpal Singh Chakkal, Advocate
for the petitioner.

Ms. Simsi Dhir Malhotra, APP UT Chandigarh.

AMAN CHAUDHARY. J.

The present petition under Section 438 Cr.P.C. has been filed seeking anticipatory bail to the petitioner in case FIR No.86 dated 06.07.2022, registered under Sections 20 and 29 of the NDPS Act at Police Station Mauli Jagran, Chandigarh.

Briefly put, the facts of the case are that on 06.07.2022, ASI Kuldip Singh along with other police officials was present on duty in the area of Mauli Jagran, Chandigarh. At about 07:05 p.m., he noticed a person coming from the side of kacha passage towards cremation ground having a black colour plastic bag in his right hand. On suspicion, the said person was apprehended with the help of other police officials. On checking of said plastic, some green colour material was found and further on smelling the same, it was found to be some contraband/ganja. The accused person was identified as Ajay Verma @ Gugu, aged 20 year. He further disclosed that the said contraband has been given by his friend namely Happy to sell the same. On asking, the accused could not produce any valid licence or permit for possessing the said contraband. On checking the weight of the said

contraband/ganja, it was found to be 2 kgs 500 grams. ASI Kuldip Singh prepared a parcel by putting the recovered ganja along with polythene bag in a white cloth bag and sealed the parcel. Other formalities of possession of the recovered contraband, preparation of test memo form, arrest of the accused and his production before the learned Illaqua Magistrate etc were completed.

Learned counsel would contend that the petitioner was not named in the FIR and he was nominated on basis of the disclosure statement of co-accused Ajay Verma @ Guru, who was arrested at the spot, alongwith the alleged contraband. 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**, 2020 AIR (Supreme Court) 5592 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.

Learned Additional Public Prosecutor opposes the prayer on the ground that the co-accused, who had named the petitioner, had specifically stated that the contraband recovered from him was given by the petitioner for selling the same. Custodial interrogation of the petitioner is necessary as to complete the chain of supply and also to ascertain the persons who are involved in the trade of drugs. In case the petitioner is granted the concession of anticipatory bail then prejudice would be caused to the case of the prosecution.

Heard.

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.) 6722-2022 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.”

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.”

In the case in hand, the name of the petitioner has surfaced based on the disclosure statement of co-accused, Ajay Verma @ Guru,, who was apprehended at the spot and recovery of the contraband was effected from him. He had categorically disclosed that the recovered contraband was supplied to him by petitioner for sale. The sole ground taken by the petitioner for grant of anticipatory bail in view of the judgment in the case of **Tofan Singh** (supra) that the disclosure statement of co-accused is inadmissible, has no force, as per the decisions of Hon'ble The Supreme Court of India in the cases of **Prabhulal** and **Samarth Kumar** (supra). Thus, the allegations against the petitioner call for a deeper probe, to unearth the modus operandi, source of origin, chain of supply and also to find out the involvement of other persons therein, so as to also eradicate the menace of drug proliferating, for which the custodial interrogation of the petitioner is required. The grant of pre-arrest bail in the present case shall be detrimental to the investigation.

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.

Keeping in view the aforesaid, 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

February 08, 2023

S.Sharma(syr)

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*