

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

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CRM-M-32830-2023

Date of decision: 25.07.2023

Jagsir Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. S. S. Gill, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY. J.

1. Prayer in the present petition filed under Section 438 of the Code of Criminal Procedure is for grant of anticipatory bail to the petitioner in case FIR No. 11 dated 02.02.2023, registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Dirba, District Sangrur.

2. Succinctly, the facts are that on 02.02.2023, the Investigating Officer with other police officials were present near bus stand, Dirba when they received secret information that one accused Sony Singh habitually indulges in sale of poppy husk and he, along with other 1-2 persons have parked one white colored care make Verna no. UP-14-BS-3637 in front of a house under construction at Shiva Enclave Colony, Patran Road, Dirba. Upon information being found credible, ruqa was sent and a raid was conducted, where 105 kgs poppy husk were recovered from the said car. The FIR was registered and accused Sony Singh was

arrested on 16.05.2023. Upon his interrogation, the petitioner was nominated on 17.05.2023 as he was to further sell the recovered contraband.

3. Learned counsel would submit that the alleged commercial quantity of contraband has not been recovered from the petitioner, who was nominated only on the disclosure statement of the accused Sony Singh. Reliance is placed on the judgment of Hon'ble The Supreme Court in the case of **Tofan Singh vs. State of Tamil Nadu**, (2021) 4 SCC 1. The petitioner is ready and willing to join the investigation as and when required by the investigating agency.

4. Learned State counsel has submitted that although the recovery has been effected from the accused Sony Singh, but the custodial interrogation of the applicant, who is the brother in law of the said co-accused, is required to recover other category of contraband and for proper investigation of the case.

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. There is no dispute that the name of the petitioner had surfaced in the disclosure statement of the co-accused, however, Hon'ble The Supreme Court in

the case of **State of Haryana vs. Samarth Kumar**, 2022 (3) R.C.R. (Criminal)

991 had 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 Appellant –State is entitled to take steps, in accordance with law.”

8. This Court in CRM-M-44196-2022 titled as **Gurpreet Singh vs. State of Punjab**, decided on 23.09.2022, had dismissed a petition for grant of anticipatory bail, wherein also the petitioner was not named in the FIR but involved on basis of the disclosure statement of his co-accused, from whom commercial quantity of contraband had been recovered, against which Special Leave to Appeal (Crl.) No. 9680/2022 filed was dismissed by Hon’ble The Supreme Court vide order dated 07.11.2022.

9. In the instant case, the petitioner is the brother in law of the co-accused, who in his disclosure statement has named him. Recovery of commercial quantity of contraband i.e. 105 kgs of poppy husk, was effected from the car bearing registration No. UP 14 BS 3637. Serious allegations of selling/distributing the recovered contraband have been alleged against the petitioner. The sole ground taken for grant of anticipatory bail that the disclosure statement of co-accused is inadmissible, has no force, in view of the decisions of

Hon'ble The Supreme Court in the cases of **Gurpreet Singh, Prabhulal** and **Samarth Kumar** (supra). The custodial interrogation of the petitioner is necessary to unearth the nexus of smuggling, in which he is indulged and also to ascertain the involvement of other persons.

10. 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) 2 SCC 565 and held thus:

- “i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
 - ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
 - iii. The possibility of the applicant to flee from justice;
 - iv. The possibility of the accused's likelihood to repeat similar or the other offences.
 - v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
 - vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- XX XX XX”

11. In **P. Chidambaram vs. Directorate of Enforcement** (2019) 9 SCC 24, Hon'ble The Supreme Court had observed that, “Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 CrPC is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant

of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

8. 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.

9. After considering the pertinent facts and circumstances of the case and the aforementioned dictum of law, granting the protection of pre-arrest bail to the petitioner would impede the thorough and effective investigation aimed at uncovering the modus operandi and ascertaining the truth. Moreover, there exists a legitimate concern that he may attempt to influence or threaten witnesses, tamper with evidence, or abscond to evade justice. Consequently, this Court finds no inclination to grant the concession of anticipatory bail to the petitioner.

10. As a sequel, the present petition being bereft of merit, is hereby dismissed.

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

(AMAN CHAUDHARY)
JUDGE

25.07.2023

Mehak

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