

210 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-35269 of 2022(O&M)

Date of Decision: 24.01.2023

Baljinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Prateek Pandit, Advocate
 For the petitioner.**

Mr. C.L. Pawar, Addl. AG Punjab.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 140 dated 01.07.2022, registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, Police Station Sultanpur Lodhi, District Kapurthala.

The allegations in nutshell are that on 01.07.2022 the police had seen two young men who were carrying polythene bags in their hands and on seeing the police officials one of them fled away from there while the other young man who had thrown his polythene bag in nearby fields, was apprehended and on enquiry he disclosed his name as Jaswinder Singh and on checking of his polythene bag it was found to be containing 230 grams of intoxicating powder and said Jaswinder Singh disclosed to the police officials that the another young man who succeeded in escaping was petitioner Baljinder Singh who is his real brother and on the basis of the said disclosure the petitioner was nominated as accused in the present case.

The counsel for the petitioner submits that the petitioner is falsely implicated in the present case on the basis of the alleged disclosure made by co-accused Jaswinder Singh and the veracity of the said disclosure will be tested during the trial. The counsel for the petitioner further submits that the petitioner is ready to join the investigation with the police. The counsel for the petitioner also refers to the order dated 25.10.2021 passed by the Hon'ble Supreme Court in **Sanjeev Chandra Agarwal & Anr Vs. Union of India**, CrI. Appeal No. 1273 of 2021, wherein the appellants, from whose premises 4 Kgs of controlled substance was allegedly recovered, were ordered to be discharged with regard to offences under Section 27-A and 29-A of the Act.

The present petition is contested by the State counsel who on instructions from ASI Avtar Singh submits that commercial quantity of intoxicating powder was recovered from the possession of co-accused Jaswinder Singh, however, the present petitioner who was also carrying some contraband in a polythene bag, succeeded in escaping from the spot. The State counsel further submits that the present case is relating to recovery of commercial quantity of contraband and thus is covered under Section 37 of the Act and further the petitioner is having criminal history being involved in two other cases under the Act and thus the petitioner is not entitled to get concession of anticipatory bail.

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

The order of the Hon'ble Supreme Court which is relied upon by counsel for the petitioner is relating to recovery of controlled substance only and further vide said order the appeal was partly allowed and the

appellants were discharged under Section 27-A and 29-A of the Act only and they were not discharged as far as offences under Sections 9-A and 25 of the Act are concerned. So the counsel for the petitioner cannot take benefit of the aforesaid order passed by the Hon'ble Supreme Court.

In the instant case commercial quantity of contraband has been recovered from the co-accused Jaswinder Singh, who is real brother of petitioner and the petitioner has been nominated as accused on the basis of the disclosure statement made by said Jaswinder Singh against him. In the light of the order passed by the Hon'ble Supreme Court dated 20.07.2022 in **State of Haryana Vs. Smarth Kumar**, CrI. Appeal No. 1005 of 2022, at this initial stage the petitioner cannot take advantage of the law laid down in **Tofan Singh Vs. State of Tamil Nadu**, (2021) 4 SCC 1. Further, rigors of Section 37 of the Act are applicable to the present case and as has been apprised by the State counsel the petitioner is already involved in two other cases under the Act.

In the light of the above, this Court is of the view that present petition deserves to be dismissed as the custodial interrogation of the petitioner is necessary for proper and effective investigation by the police. Consequently, the present petition is hereby dismissed. However, any observations made hereinabove are not to be considered as expression of opinion on the merits of the case.

24.01.2023

Jiten

**(KARAMJIT SINGH)
JUDGE****Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No**