

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

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CRM-M-33924-2023(O&M)  
Date of decision: 14.09.2023

Sushil Kumar @ Bhima

....Petitioner

Versus

State of Haryana

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

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Present : Mr. V.B. Godara, Advocate for the petitioner.

Mr. Jagdish Manchanda, Addl. AG, Haryana.

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**AMAN CHAUDHARY, J.**

**CRM-30004-2023**

Allowed as prayed for subject to all just exceptions. Annexure

P-1 is taken on record.

**CRM-M-33924-2023**

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.330, dated 22.06.2023, registered under Sections 15(C) and 27-A of NDPS Act, 1985, at Police Station City Fatehabad, District Fatehabad and all consequential proceedings arising therefrom.

2. The factual matrix of the case as per the present FIR are that on 22.06.2023, when in connection with checking of miscreants and suspected vehicles, the investigating officer, along-with other officials were present in

Bhodia Kalan in Village Bighad. An informer gave them secret information that accused Narendra is involved in the sale of poppy straw and is returning to his Dhani with a huge quantity and could be arrested with his car. The officials hid near his Dhani and on intercepting his car, arrested him. He disclosed his name as Narendra Kumar, son of Hawa Singh and on checking his car, 6 filled black color plastic bags were found. After giving a notice under Section 50 NDPS, he gave his consent to be checked by a gazetted officer. On opening the bags, 118 kg of poppy straw was recovered, which was taken into possession vide separate memo. The accused in his second disclosure statement, revealed that he purchased the contraband from the petitioner.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case. No recovery has been effected from him. He has not been named in the FIR. The police officials had recently visited his premises, which indicates apprehension of his arrest. His name surfaced based on the second disclosure statement, reliance in this regard 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 and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to him.

4. Learned State counsel opposes the prayer on the ground that commercial quantity of contraband was recovered from the co-accused. Secret information was received that the co-accused was involved in the business of selling poppy straw and that he would be coming to his Dhani. On the basis of

the same, the co-accused was apprehended with 6 black coloured plastic bags containing 118 kg poppy straw. He refers to the status report dated 08.09.2023, filed by Jagdish Kumar, HPS, Deputy Superintendent of Police, HQ Fatehbad, wherein serious allegation have been levelled against the petitioner of him selling the contraband to the co-accused for an amount of Rs. 2800/- per kg, who was apprehended at the spot. It was revealed that out of an agreed sum of Rs.3,30,000/-, a sum of Rs.2,50,000/- had already been received in cash by the petitioner from the co-accused and the balance of Rs.80,000/- was to be paid after sale of the contraband. Moreover, the petitioner was the one who got the co-accused involved in this business and he had been involved in 6 more cases. The police officials, on the basis of disclosure statement, had raided his house but were unable to find him, as he is evading arrest. The case is still being investigated and to find out the source and delivery of the contraband, the custodial interrogation of the petitioner is required. There is every apprehension of him repeating the offence, fleeing from justice and tampering with the evidence.

5. Heard the learned counsel and perused the file.

6. It is apposite to make a reference to the order of Hon'ble The Supreme Court 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. Though, there is no dispute that the name of the petitioner had surfaced in the disclosure statement of the abovementioned co-accused, however, in this context also 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, wherein also the petitioner was involved in the case on the basis of disclosure statement and reliance had been placed on judgment in the case of **Tofan Singh** (supra), dismissed the petition for grant of anticipatory bail by observing that commercial quantity of

contraband was recovered from the co-accused and referring to the decision in the case of **Samarth Kumar** (supra), against which Special Leave to Appeal (Crl.) No. 9680/2022 filed by the accused was dismissed by Hon'ble The Supreme Court vide order dated 07.11.2022.

9. It is apposite to refer to the relevant paras of the status report, which read thus:

“8. That during investigation, 5 days police remand of co-accused Narender Kumar was also got issued and during remand, co-accused Narender Kumar again suffered his disclosure statement and disclosed to the effect that “I had disclosed falsely with the intention of mislead the police and to save Sushil Kumar alias Bhima (present petitioner) that the police would not go so far. Actually the truth is that I am married in village Sadalpur and present petitioner Sushil Kumar alias Bhima son of Hari Singh Jajuda, a resident of village Sadalpur, works in selling Poppy-straw and while coming to village Sadalpur, I started talking to the present petitioner Sushil Kumar alias Bhima. He further disclosed that when I told present petitioner Sushil Kumar about my incurring a debt due to spending money on my sister's wedding, then present petitioner Sushil Kumar told me that he (present petitioner) buys Poppy-straw from Rajasthan at a cheap price and sells the same at a much higher price here in my area. If you want to do this work, then tell me. I got greedy and agreed. When I asked present petitioner Sushil Kumar alias Bhima about giving him Poppy-straw, then present ‘petitioner Sushil Kumar alias Bhima started saying that he will giving you Poppy-straw with the condition that you will never talk to me (with the petitioner) on mobile, then I said that I will never talk on mobile but whenever I need Poppy-straw, I will come to your village, then present petitioner Sushil Kumar alias Bhima told me that when you need for it, please let me know, he (petitioner) will give you Poppy-straw. He further disclosed that on 16.06.2023, I went to village Sadalpur with my car Santro

bearing Reg. number HR70A 5246 and I purchased total 6 plastic bags of Poppy-straw for about 118 kg at the rate of Rs 2800/- per kilogram from the present petitioner Sushil Kumar alias Bhima and I gave Rs. 2,50,000/- to present petitioner Sushil Kumar in cash on the spot and told him to pay the remaining Rs. 80,000/- by selling Poppy-straw. He further disclosed that on the same day, he had come to village Bighar with a total of 6 plastic bags loaded with Poppy-straw in his Santro car. When I reached near village Bighar, on seeing police vehicle standing on the road ahead, I took my car to the canal between Bighar & Dhand and I kept hide 6 bags of Poppy-straw in bushes near the canal and today (i.e. on 22.06.2023), when he again loaded said 6 bags in his car and came to his car and came to his Dhani, then, immediately the police caught me in the Dhani with the Poppy-straw in the car. In pursuance of his disclosure statement, co-accused Narender Kumar got demarcated the place from where he purchased recovered contraband from the present petitioner-accused Sushil Kumar alias Bhim at Sadalpur and also got demarcated the place where he kept hide recovered 6 bags of Poppy-straw.

7. That during investigation, petitioner could not arrested and petitioner is absconding from arrest and arrest of the present petitioner-accused is still pending till date.”

10. In the case at hand, though the petitioner did not figure in the FIR, however, serious allegations of purchasing and selling intoxicant substances after procuring them from Rajasthan, are levelled against him and huge quantity of contraband i.e. 6 plastic bags containing 118 kg of poppy straw has been recovered from his co-accused, apprehended at spot based on secret information, which falls in the category of commercial quantity. It has further been revealed that the petitioner got him involved in drug peddling. The petitioner had been involved in 6 more criminal cases, 3 out of which are still pending. Specific amount has been alleged to have been paid to the

petitioner on account of purchase of contraband from him and the balance was to be given by the co-accused after selling the poppy straw. The submission for grant of anticipatory bail made that there is only disclosure statement of co-accused against the petitioner, which 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 petitioners is stated to be necessary to unearth the nexus of smuggling, in which they are indulging and also to ascertain the involvement of other persons.

11. 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.

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12. 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."

13. It is manifestly clear that anticipatory bail is not a right that may be granted in every other case. The Court has to take into consideration all the facts and circumstances and after its utmost satisfaction, grant it only in exceptional circumstances, where all the factors and parameters are met and there is no possibility of him interfering in the path of justice.

14. In **State represented by the C.B.I. vs. Anil Sharma**, 1997(4) R.C.R.(Criminal) 268, Hon'ble The Supreme Court had observed that in cases where serious allegations have been alleged and the truth needs to be elicited

from the accused, the same can only be done through the custodial interrogation as compared to questioning a suspect, who is already on anticipatory bail.

15. The foregoing facts and circumstances reveal that the element of criminality cannot be ruled out, and couching the petitioner in a comparative safety of pre-arrest bail will hamper the thorough investigation of the case as it may leave many loose ends and gaps as also there being an apprehension of him re-offending. Thus, the present case when viewed in the light of the afore-referred judgments, this Court finds the petitioner to be not entitled to grant of concession of anticipatory bail. Resultantly, the present petition is dismissed.

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

(AMAN CHAUDHARY)  
JUDGE

14.09.2023  
Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No