

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

107

CRM-M-34189-2023 (O&M)
Date of decision: 18.07.2023

Kewal Masih @ Mintu

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Anand Kaushal and Mr. D.S. Gandhi, Advocates
for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case of FIR No.09 dated 18.01.2023, registered under Sections 21, 27-A, 29, 61 and 85 of the NDPS Act, at Police Station Ramdass, District Amritsar Rural.
2. As per the prosecution version, on 18.01.2023, co-accused Saurav was arrested along with 15 grams of heroin and Rs.62,500/- drug money, which he kept in his possession without any licence or permit. During investigation, he suffered a disclosure statement that he and the petitioner are dealing in the business of purchasing and selling heroin.
3. Learned counsel contends that the petitioner was not apprehended at the spot. It is the co-accused namely Saurav, from whom non-commercial quantity of contraband was recovered, who had named him in his disclosure statement. The petitioner has been falsely implicated in the case. No recovery has been effected

from him. 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**, (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 the petitioner is involved in 11 more cases, out of which 8 are under the NDPS Act. Co-accused from whom the recovery of the contraband was effected had stated that he and the petitioner have a business of purchasing and selling of heroin. Custodial interrogation of the petitioner is required in the instant case to find the source of origin, the entire chain of supply of contraband and the other drug peddlers involved, if any. There is every possibility of the petitioner fleeing from justice.

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. Furthermore, a gainful reference be made to **State of Haryana vs. Samarth Kumar**, 2022 (3) R.C.R. (Criminal) 991, wherein 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 Appellant –State is entitled to take steps, in accordance with law.”

8. In the case in hand, the present petition has been filed with the same facts that the name of the petitioner has surfaced based on the disclosure statement of co-accused Saurav, who was apprehended at the spot and recovery of the 15 grams heroin along with Rs.62,500/- drug money has been effected from him. He had categorically disclosed they both are in the business of selling and purchasing heroin. The petitioner is involved in 13 more cases, out of which 11 are under NDPS Act. 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 **Prabhulal** and **Samarth Kumar**

(supra). His custodial interrogation is necessary so as to complete the chain of supply and also to ascertain the persons who may be involved in this nexus. In case, the petitioner is granted the concession of anticipatory bail then prejudice would be caused to the case of the prosecution.

9. 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.

10. Keeping in view the facts and circumstances and the judgments referred to above, 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

July 18, 2023
M.Kamra

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