

CRM-M- 35981 of 2023

103 IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

2023:PHHC:095656

CRM-M- 35981 of 2023

Date of decision : July 27, 2023

Rani

..... Petitioner

Versus

State of Punjab

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. Sanjeev Kumar Banga, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Senior DAG., Punjab.

PANKAJ JAIN, J. (ORAL)

1. Prayer in the present petition is for grant of pre-arrest bail in FIR No. 47 dated 09.06.2023 for offences punishable under Sections 22 and 29 of NDPS Act, 1985 registered at Police Station Rohon, District SBS Nagar.
2. Learned counsel for the petitioner submits that the petitioner has been nominated merely on the basis of disclosure statement of the co-accused who was apprehended along with 50 intoxicating tablets and on his arrest, from his clothes the contraband was effected.
3. Per contra, learned counsel for the State who appears on advance notice on instructions from ASI Rampal submits that the petitioner is a habitual offender having two more cases against him.
4. I have heard learned counsel for the parties and have gone through the record of the case.
5. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia's case (supra)**, Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation

appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail....

6. *Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that:-*

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. “

Further Supreme Court in the case of **Sumitha Pradeep Vs. Arun Kumar C.K. and another 2022 (4) RCR Criminal) 977** held as under:

“There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the

punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

7. As per settled law **(in C.B.I vs. Anil Sharma, 1997(7) 187)** there is a qualitative difference between custodial interrogation and questioning a person insulated by pre-arrest bail. Investigation at this nascent stage cannot be allowed to be belayed.
8. The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.
9. In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.
10. Needless to say nothing recorded hereinabove should be construed as expression on merits of the case

**(PANKAJ JAIN)
JUDGE**

July 27, 2023
archana

Whether speaking/reasoned	Yes
Whether Reportable :	No