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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M No.36240 of 2023 (O&M)****Date of Decision: 31.08.2023**

Balwinder Singh

..... Petitioner

V/s.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Manav Parteek Sharma, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

1. The present is the first petition filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the petitioner in FIR No.178 dated 29.04.2023, under Sections 22, 61 of the Narcotics Drugs and Psychotropic Substances (NDPS) Act, 1985 registered at Police Station Division-7, District:Police Commissionerate Ludhiana.

2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case and he was not even named in the FIR. It was only on the disclosure statement made by the co-accused namely, Sunny who was caught by the police party while he was on a motor cycle and threw away a polythene bag which contained 900 grams of Alprazolam which falls in the category of commercial quantity. He submitted that thereafter on his statement, the name of the petitioner was nominated while alleging that the petitioner was also alongwith the aforesaid co-accused namely, Sunny but he had stepped down a little earlier when the aforesaid Sunny was caught. He submitted that infact the

petitioner was earlier involved in one case under Section 307 IPC, wherein the allegation against the petitioner was that he had injured a police Officer and in that case, he has been convicted regarding which an appeal has been filed before this Court and the sentence has been suspended by this Court. It was only because of that enmity that he has been falsely implicated in the present case and therefore, the case of the petitioner may be considered for the grant of anticipatory bail.

3. On the other hand, Mr. Ramdeep Partap Singh, learned Senior DAG, Punjab while referring to the affidavit which has been filed by the Assistant Commissioner of Police (East), Ludhiana has submitted that it is a case where the co-accused namely, Sunny was coming on a motor-cycle and the police already had suspicion with regard to the same and where the police had laid down a *naka* he tried to flee while throwing the packet which contained 900 grams of Alprazolam and thereafter he was overpowered with the help of other police Officers and he was apprehended. During the course of investigation, he submitted that he has disclosed that in fact on the motorcycle the petitioner was also riding alongwith Sunny and both of them supplied intoxicants to one Rajesh who is lodged in a jail and the *modus operandi* for supplying the intoxicants substance in jail to the aforesaid Rajesh is by throwing the packets of intoxicants across the walls and inside the jail and thereafter the payment is made by the aforesaid Rajesh by way of online payment. The learned State counsel further submitted that during the course of investigation, a direct link has been found established with the petitioner and the aforesaid co-accused Sunny especially in view of the fact that the motor cycle which was apprehended belongs to the brother of the petitioner namely, Tarsem Singh. Learned State counsel also submitted that the plea taken by the learned counsel for the petitioner that the disclosure statement of the co-

accused is not relevant has to be viewed in the light of judgment of Hon'ble Supreme Court in "*State of Haryana Vs. Samarth Kumar*", 2022(3) RCR (Criminal) 991, to the extent that the prayer made in the present petition is for grant of anticipatory bail and not for the grant of regular bail. Apart from the above, there is a substantial material available with the Investigating Agency to connect the present petitioner with the above co-accused namely, Sunny. Learned State counsel further referred to para no.5 of the affidavit to contend that the petitioner is a habitual offender and is involved in 03 more cases and out of 03 cases, in one case he is convicted under Section 307 IPC. Learned State counsel has vehemently opposed the grant of anticipatory bail to the petitioner also on the ground that in case he is granted bail, then he may repeat the offence or can abscond.

4. I have heard learned counsel for the parties.

5. In the present case, the petitioner is seeking prayer for grant of anticipatory bail. After issue of notice of motion, the State has filed its affidavit through Assistant Commissioner of Police (East), Ludhiana. The other co-accused namely, Sunny who was apprehended on the spot had disclosed with regard to the present petitioner that the petitioner alongwith the aforesaid co-accused supply intoxicant substance to one Rajesh who is already lodged in Central Jail, Ludhiana by wrapping the intoxicant substance in packets and throwing across the walls of the jail premises and thereafter the online payment is made by the aforesaid Rajesh. As per affidavit filed by the State, it appears that substantial evidence is available in the present case to connect the petitioner with the present offence. The petitioner is also stated to be a habitual offender and is convicted under Section 307 IPC and apart from the above, the other two cases are under Section 379B and

also one case is under the Excise Act in which the petitioner is stated to be under-trial. The Hon'ble Supreme Court in "*State of Haryana Vs. Samarth Kumar*", *2022(3) RCR (Criminal) 991*, observed that the plea of disclosure statement of the co-accused being not admissible in evidence is not applicable in the cases pertaining to the prayer for the grant of anticipatory bail, but certainly the same can be made available for the cases seeking grant of regular bail.

6. After hearing learned counsel for the parties, this Court is of the view that it is not fit case for grant of anticipatory bail, especially in view of the apprehension expressed by learned State counsel. Apart from above, in the present case, the custodial investigation of the petitioner is required for the purpose of elicitation of truth and for the purpose of qualitative investigation. The allegations with regard to supply of intoxicant substance by wrapping it in a packet and throwing across the walls of jail and supply through a person who is already in custody in jail, is a serious and grave allegation and therefore due to the gravity of the offence also, the petitioner is not entitled for the grant of anticipatory bail.

7. In view of the abovesaid facts and circumstances of the case, this Court is of the considered view that the petitioner does not deserve the concession of anticipatory bail.

8. Consequently the present petition is dismissed.

9. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

31st August, 2023

Sonia Puri

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No