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

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**CRM-M-42318-2022 (O&M)**
**Date of decision: 18.01.2023**

**BHUPINDER SINGH@BHINDA**

....Petitioner(s)

**Versus**

**STATE OF PUNJAB**

...Respondent(s)

**CRM-M-49500-2022 (O&M)**

**HARPAL SINGH**

....Petitioner(s)

**Versus**

**STATE OF PUNJAB**

...Respondent(s)

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

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Present : Mr. Rishu Mahajan, Advocate
for the petitioner(s).

Mr. Manipal Singh Atwal, DAG Punjab.

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**AMAN CHAUDHARY. J.**

This order shall dispose of the above-mentioned two criminal miscellaneous petitions as both the petitions arise out of same FIR.

Present petitions have been filed under Section 438 CrPC seeking anticipatory bail to the petitioners in case FIR No.193 dated 06.07.2022, registered under Section 21(B)/29 of the NDPS Act registered at Police Station Cantonment, Amritsar.

As per prosecution version, on 06.07.2022, co-accused Sarabjit Singh was arrested along with 105 gram heroin, which he kept in his possession without

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any licence or permit. During investigation, co-accused suffered a disclosure statement in which he disclosed that he used to purchased the heroin from petitioners herein namely Harpal Singh and Bhupinder Singh @ Bhinda.

Learned counsel would contend that the petitioners were not named in the FIR and they were nominated on basis of the disclosure statements of co-accused Sarabjit Singh, who was arrested at the spot, alongwith the alleged contraband. He has vehemently contended that the petitioners have been falsely implicated in the case. He submits that the disclosure statement of the co-accused is not admissible and thus, there is no evidence against the petitioners regarding their complicity in the present case. He places reliance on the judgment in the case of **Tofan Singh vs. State of Tamil Nadu,** 2020 AIR (Supreme Court) 5592 to contend that the disclosure statement is inadmissible in evidence. The petitioners are ready and willing to join the investigation and cooperate with the investigating agency. Thus, he prays for grant of anticipatory bail to them.

Learned State counsel opposes the prayer on the ground that the co-accused, who had named the petitioners, had stated that the supplier of the contraband recovered from him were the petitioners. He further submits that the custodial interrogation of the petitioners is required in the instant case to find the source of origin and the entire chain of supply of contraband.

Heard.

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.) 6722-2022 was dismissed vide order dated 14.12.2022, affirming the order of dismissal of anticipatory bail by Madhya

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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."

Furthermore in the case of **State of Haryana vs. Samarth Kumar**, 2022 LiveLaw (SC) 622, 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 Appellate –State is entitled to take steps, in accordance with law."

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In the case in hand, the name of the petitioners have surfaced based on the disclosure statements of co-accused, Sarabjit Singh, who was apprehended at the spot and recovery of the contraband was effected from him. He had categorically disclosed that the petitioners were the supplier of the said contraband recovered from him. The sole ground taken by the petitioners for grant of anticipatory bail in view of the judgment in the case of **Tofan Singh** (supra) that the disclosure statement of co-accused is inadmissible, has no force, as per the decisions of Hon'ble The Supreme Court of India in the cases of **Prabhulal** and **Samarth Kumar** (supra). Thus, the custodial interrogation of the petitioners is necessary so as to complete the chain of supply and also to ascertain the person who are involved in the trade of drugs. In the case, the petitioners are granted the concession of anticipatory bail then prejudice would be caused to the case of the prosecution.

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.

Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioners. As a sequel thereto, the present petitions being bereft of merit, are hereby dismissed.

**(AMAN CHAUDHARY)**
**JUDGE**

**January 18, 2023**
*S.Sharma(syr)*

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

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