

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

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CRM-M-41926-2023

Date of decision: 04.09.2023

Vishal Dhuria

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Jagdip Singh Bhatta, Advocate for the petitioner.

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.151 dated 26.05.2023, registered under Sections 22, 22(c), 29, 61, 85 of NDPS Act, 1985 at Police Station Special Task Force, Phase-4, SAS Nagar Mohali.

2. The prosecution case as set up is that on 26.05.2023, on receipt of a secret information, ASI Balkar Singh, alongwith other police officials laid a naka at main road, Guruharsahai Goluka T-point, link road Little Flower School, Guruharsahai. They saw a clean shaved young man coming on a motorcycle bearing PB-77-3004, who on seeing the police tried to escape but was nabbed. He told his name as Navdeep Kumar. On search, two black colour polythenes were recovered from him, one of which contained 72 strips tablets Alprazolam I.P.05 mg, each strip containing 75 tablets and the other 190 strips, each containing 60

tablets of Tramadol Hydrochloride I.P.100 mg SR Tablets Radol-100.

Consequently, FIR in question was registered.

3. Learned counsel submits that the petitioner was not named in the FIR. He was implicated in the disclosure statement of co-accused Navdeep Kumar. He is running a medical store in the name and style M/s Angel Homeo Pharma and the said accused had been purchasing homeopathic medicine from him and in lieu of which he had deposited an amount of Rs.10,000/- on 09.05.2023. 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 has not approached this Court with clean hands, as he has concealed the fact that he already stood convicted under Section 22 of NDPS Act. In the present case, commercial quantity of contraband was recovered from the co-accused of the petitioner, who in his disclosure statement, specifically stated that he used to purchase the said contraband from him. The bills that have been appended to the petition are not genuine as the GSTIN or PAN No. have also not been mentioned and no GST is also shown to have been paid. Further, the bills are of early 2023, whereas the payment was made in May, 2023. No bills prior to January have been shown. There are call details also between the petitioner and the co-accused. The case is still under investigation and custodial interrogation of the petitioner is therefore required in the instant case to find the source of origin, the entire chain of supply of contraband and the other drug peddlers involved. There is every possibility of the petitioner fleeing from justice and tampering with the evidence. Thus, she prays for the dismissal of the present petition.

5. Heard.
6. It is apposite to refer to the relevant paras of the status report dated 29.08.2023, which read thus:

“5. That during interrogation on 31.03.2023, accused Navdeep Kumar specifically stated that total 16800 intoxicant tablets (i.e. 5400 tablets of Alprazolam I.P. 0.5 mg Rlam 0.5 and 11400 tablets of Tarmadol Hydrochloride I.P 100 mg SR Radol-100), which have been recovered from him in this case were brought by him from Vishal Dhuria (petitioner), who is running his Homeopathy Medical Shop under the name and style of Homeo Pharma (Homeopathic store) homeopathic whole sale Medicine Near Lal Mann MC Street, Jalalabad (W), District Fazilka. During interrogation, accused Navdeep Kumar also stated that on 09.05.2023, he had deposited Rs.10,000/- in the Bank Account of Vishal Dhuria (petitioner). During investigation, Statement of Account No.00651000019471 of petitioner Vishal Dhuria with Punjab and Sind Bank was thoroughly scrutinized and it was found that on 09.05.2023 accused Navdeep Kumar had credited Rs.10,000/- in the account of accused/petitioner Vishal Dhuria. During investigation, the call detail of Mobile No.98779-67206 of accused/petitioner Vishal Dhuria was obtained and on checking, it has been found that accused Navdeep Kumar has been in talking terms from his Mobile No.75081-55155 with accused/petitioner Vishal Dhuria since long. During investigation, it also revealed that petitioner Vishal Dhuria is already involved in a criminal case FIR No. 11, dated 07.02.2015, Under Section 22/61/85 NDPS Act, Police Station City Jalalabad, in which, recovery of 48000 intoxicant tablets of 220 Alprazolam was effected and he was arrested on 07.02.2015 and lateron, convicted by the Court of Additional Sessions Judge, Fazilka on 09.08.2019. Accordingly vide DDR No.21, dated 31.05.2023, accused/petitioner Vishal Dhuria was nominated as accused and offence Under Section 22(C)/29 NDPS Act was added in the FIR. Best efforts were made to arrest accused/petitioner Vishal Dhuria. But he remained absconding. The case is still under investigation being carried over by ASI Balkar Singh, S.T.F. Ferozepur Range and after the completion of investigation, further necessary action shall be taken accordingly.

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7. That so far as the specific attribution of petitioner Vishal Dhuria in the commission of offence is concerned, it is most respectfully submitted that from the investigation conducted

uptil now, it has been found that the accused/petitioner Vishal Dhuria is actively doing the business of selling intoxicant tablets under the garb of his Homeopathic Medical Hall and is closely associated with accused Navdeep Kumar in selling intoxicant tablets. It has also been found that the intoxicant tablets i.e. 5400 tablets of Alprazolam I.P. 0.5 mg Rlam 0.5 and 11400 tablets of Tarmadol Hydrochloride 1.P. 100 mg SR Radol-100 which have been recovered from accused Navdeep Kumar were brought by him from present petitioner Vishal Dhuria and in lieu of their such like dealings, on 09.05.2023, accused Navdeep Kumar had deposited Rs.10,000/- in the Bank Account of Vishal Dhuria (petitioner). The accused/petitioner namely Vishal Dhuria has been found in constant talking terms from his Mobile No. 98779-67206 on the Mobile No.75081-55155 of accused Navdeep Kumar since long and they talked with each other 37 times for the period w.e.f. 05.01.2023, till 15.05.2023. The recovered contraband of intoxicant tablets is falls under the category of commercial quantity. The petitioner is also having past criminal history in the shape of above said FIR registered him. From the investigation conducted uptil now, sufficient evidence has been found to bring home the guilt of petitioner Vishal Dhuria and as such, his custodial interrogation is required in the present case. The allegations against the petitioner are very serious in nature and there is a reasonable apprehension that if the petitioner is granted concession of bail, he will directly or indirectly make inducement or threat to any person acquainted with the facts of the present case and shall misuse the concession of bail.”

7. In the case in hand, the petitioner has been named by co-accused Navdeep Kumar, from whom commercial quantity of contraband was recovered, when he was apprehended at the spot. During investigation, he disclosed that he had deposited a sum of Rs.10,000/- in the bank account of the petitioner and there are call records also available with the investigating agency revealing that the petitioner was constantly in touch with the said co-accused and he be actively involved in the drug trade being carried out under the garb of Homeopathic Medical Hall. Moreover, the petitioner has concealed the factum of his having been involved in FIR No.11 dated 07.02.2015, registered under Section 22 of the

NDPS Act, wherein 48000 tablets Fortadol and 220 tablets of Alprazolam 0.5 had been recovered, wherein, he was convicted vide judgment dated 09.08.2019 by Additional Sessions Judge, Fazilka.

8. Hon'ble The Supreme Court in **CBI vs. Santosh Karnani**, (2023) SCC Online SC 427, **Sadhna Chaudhary vs. State of Rajasthan**, (2022) SCC OnLine SC 869, **Dr. Naresh Kumar Mangla vs. Smt. Anita Agarwal and Ors.**, 2020 SCC Online SC 1089, while expounding the law on anticipatory bail relied on **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, which after due deliberation on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 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.

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9. 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.

10. Hon'ble The Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, has 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.”

11. 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.

12. Keeping in view the facts and circumstances of the case and the judgments referred to above, at this stage, an element of criminality cannot be ruled out and allowing the petitioner to join the investigation in a case of present nature under the protection of pre-arrest bail, would impede a comprehensive and effective investigation to discover the modus operandi and elicit the truth; there being an apprehension of him influencing and threatening the witnesses or tampering with the evidence and fleeing from justice, more pertinently,

apprehension of committing the crime again; his custodial interrogation is also stated to be imperative so as to complete the chain of supply and also to ascertain the persons who may be involved in this nexus, and also his antecedents, this Court is not inclined to grant such relief to the petitioner.

13. 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.

14. In view of the forgoing discussion, the present petition being devoid of merits is hereby dismissed.

15. 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

04.09.2023

Ankur

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