

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

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CRM-M-43211-2023

Date of decision: 04.09.2023

Bhagat Singh @ Bhagat Kabir

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Umesh Aggarwal, 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.57 dated 29.07.2023, registered under Sections 21, 29, 61, 85 of NDPS NDPS Act, 1985 at Police Station Kiratpur Sahib, District Rupnagar.

2. The case set up by the prosecution is that on the basis of a secret information, co-accused, Poonam, Sohan Lal, Veer Singh and Baljit Singh, who were travelling together in a vehicle, were apprehended and from them, a total recovery of 1 kg of heroin was effected. Resultantly, FIR was registered and during investigation, they all specifically disclosed that the contraband recovered had been purchased from the petitioner.

3. Learned counsel contends that the petitioner has been falsely

implicated in the present case, only on the basis of the disclosure statement of the co-accused, with whom he has no concern. There is no iota of evidence, which connects him with the recovery of the alleged contraband. 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. On the other hand, learned State counsel opposes the prayer of the petitioner with vehemence and submits that commercial quantity of contraband was recovered from the co-accused of the petitioner, who were travelling together in a vehicle. In their disclosure statements, it has been specifically stated that they used to purchase the said contraband from him. Prayer for dismissal of the present petition is made on the ground that the investigation is at the initial stage, and to find the source of origin, chain of supply of contraband and other drug peddlers involved, custodial interrogation is required. There is every possibility of the petitioner fleeing from justice and tampering with the evidence as also involvement in similar offence. Thus, she prays for the dismissal of the present petition.

5. Heard.

6. In the instant matter, the petitioner was named by the co-accused, who were apprehended at the spot and commercial quantity of contraband was recovered from them. There are specific allegations made by the co-accused against the petitioner that the recovered contraband was purchased by them from the petitioner. The investigation is still at a nascent stage and the allegations against him call for a deeper probe, to unearth the source of origin, chain of supply and find out the involvement of other persons. Thus,

the grant of pre-arrest bail in the present case shall be detrimental to the investigation.

7. 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.

8. 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."

9. 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.
- XX XX XX”

10. It is manifestly clear that anticipatory bail is not a right that may be granted indiscriminately. The Court must meticulously assess all the facts and circumstances and only after its utmost satisfaction, bestow the same in extraordinary circumstances, where all the factors and parameters are met and there is no likelihood of him obstructing the path of justice.

11. The foregoing facts and circumstances when viewed in the light of the afore-referred judgments, leads this Court to the conclusion that the concession of anticipatory bail must not be extended to the petitioner, since the element of criminality cannot be ignored at this stage, and enabling him to join the investigation under the protectiveness of pre-arrest bail will handicap the thorough investigation of the case to uncover the modus operandi and

elicit the truth; his custodial interrogation cannot be dispensed with, in order to complete the chain of supply and ascertain the persons who may be involved in this nexus; and also the apprehension of him influencing and threatening the witnesses or tampering with the evidence and fleeing from justice cannot be overlooked.

12. 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.

13. Thus, the present petition being devoid of merits is hereby dismissed.

14. 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