

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

CRM-M-51580-2023

Date of Decision: 08.12.2023

Nidhi

...Petitioner

versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Anshul Sharma, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J (ORAL)

1. The second petition has been filed under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in FIR No.22 dated 27.01.2023, registered under Sections 21(b) NDPS (Section 29 of NDPS and Section 25(6)(7) of Arms Act, 1959 added later on), at Police Station Phillour, District Jalandhar.
2. Succinctly put, the facts emanating from the FIR are that on 27.01.2023, SI Baljit Singh, Phillaur along with fellow police officials was present in a private car at the spot, where they noticed a bullet motorcycle bearing registration No.PB-08-DV-1433 coming from the side of Nurmehal Bus Stand. A person was seen coming on a bike with a heavy polythene, who upon noticing the barricading attempted to reverse course but lost his balance and fell down. On being enquired, he disclosed his identity as Sandeep alias Kali. A search of the aforementioned polythene bag was conducted and 35 grams of heroin was recovered. During the course of investigation, accused Sandeep @ Kali disclosed that he intended to sell the substance in connivance with Vijay Masih, Tania and

Karan @ Tidda, who were arraigned as co-accused in the aforesaid FIR vide DDR No.21 dated 28.01.2023. Furthermore, two .30 Bore pistols and 20 grams of heroin were also recovered from co-accused Karan @ Tidda, who divulged that the said contraband was purchased from Rohit, Akashdeep @ Karan and petitioner-Nidhi, who were accordingly also named as co-accused in the above-said FIR.

3. Learned counsel contends that the petitioner is innocent and has been falsely implicated in the case. Her name did not figure in the present FIR and it is only on the disclosure statement of co-accused Karan @ Tidda that she was involved. In this regard, reliance is placed on the judgment of Hon'ble the Supreme Court in the case of **Tofan Singh vs. State of Tamil Nadu**, (2021) 4 SCC 1. Further, her husband is already facing prosecution in a case registered under the NDPS Act, therefore, she is also being incriminated. The petitioner is ready and willing to join the investigation and cooperate with the investigating agency. Thus, prays for grant of anticipatory bail to her.

4. On the other hand, learned State counsel opposes the bail on the ground that this is the second petition filed by the petitioner seeking anticipatory bail, insofar as the first one is concerned, the same was withdrawn for her to surrender before the police and it was disposed of on 21.08.2023 that bail petition be decided expeditiously, in case, she surrenders on or before 04.09.2023. However, instead of complying with the said order, this petition has been filed. A reply by way of an affidavit of Simranjit Singh, PPS, Deputy Superintendent of Police, Sub-Division Phillaur, District Jalandhar dated 18.11.2023, has also been filed, wherein it has been averred that 4 FIRs have been registered against the petitioner. In one, she was convicted vide judgment and order dated 22.08.2019 by the trial Court, in the other two, challan stands presented and in the fourth,

investigation is going on. There are no new arguments or pleas to entertain the present petition. Her custodial interrogation is crucial for determining the source and delivery of the contraband as the investigation is still underway. She is a habitual offender and in all likelihood, will commit a similar offence again. Thus, instant petition be dismissed. To buttress his submission, reliance is placed on **Gulab Singh vs. State of Haryana**, CRM-M-52639-2023 decided on 17.10.2023.

5. Heard and perused.

6. At the outset, it is worth noting that when the first petition was on the verge of being dismissed by this Court, a prayer was made expressing the willingness of the petitioner to surrender before the trial Court, on the basis of which, it was disposed of. As regards entertaining second or subsequent bail petition under Section 438 CrPC is concerned, it has been held by Division Bench of this Court that the same would not be maintainable merely on the ground that some new inconsequential and cosmetic change in circumstances have come about, further developments such as arrest of co-accused or main accused or bail granted to co-accused, different considerations, some more details, new documents or illness of the accused. It would also not be maintainable on a plea or ground that the Court on the earlier occasion failed to consider any particular aspect or material on record or that any point then available to the accused was not taken, agitated or pressed before the Court. [See **Manjinder Kaur vs. State of Punjab**, CRM-M-40916-2022 decided on 30.01.2023].

7. From the reply filed by the State, it is evident that the petitioner is involved in 4 more NDPS cases, out of which, in one, she even stands convicted. She is said to be the person from whom co-accused-Karan @ Tidda had purchased the contraband recovered from him. As per the submissions, the present petition is not maintainable in accordance with the afore-said judgment and no valid reason

has been given for not surrendering in terms of the order in the previous petition. Her custodial interrogation is stated to be necessary to unearth the nexus of sale and purchase of narcotics, involvement of other persons and to take the ongoing investigation to a logical end. The petitioner being a recidivist, there is every possibility of her committing a similar offence again.

8. It is apposite to make a reference to the order of Hon'ble the Supreme Court in the case of **Prabhulal vs. Central Bureau of Narcotics**, wherein the SLP (Crl.) 6744-2022 was dismissed vide order dated 14.12.2022, affirming the order of dismissal of anticipatory bail by Madhya 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.”

9. The name of the petitioner had surfaced in the disclosure statement of the co-accused and in this regard, reference can be made to **State of Haryana vs. Samarth Kumar**, 2022 (3) R.C.R. (Criminal) 991, wherein Hon'ble the Supreme Court 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 Appellant–State is entitled to take steps, in accordance with law.”

10. In the case in hand, substantial accusations of the involvement of the petitioner in the drug trade have been levelled, as per the disclosure statement of the co-accused to the effect that she is engaged in the trade of the narcotics. The submission made with regard to inadmissibility of disclosure statement of co-accused has no force, particularly in view of the peculiar facts of the case as also the decisions in **Prabhulal** and **Samarth Kumar** (supra).

11. Hon’ble the Supreme Court in **Siddharam Satlingappa Mhetre vs. State of Maharashtra**, (2011) 1 SCC 694, while expounding the law on anticipatory bail relied on the parameters evolved by the Constitutional Bench in **Gurbaksh Singh Sibbia vs. State of Punjab**, (1980) 2 SCC 565 and 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.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

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12. In **P. Chidambaram vs. Directorate of Enforcement**, (2019) 9 SCC 24, Hon’ble the Supreme Court had 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.”

13. It is trite that every situation cannot warrant the grant of anticipatory bail. The Court after weighing all the facts and circumstances and upon its utmost satisfaction that all the requirements and conditions are met, must allow such prayer only in exceptional circumstances. Thereby, leaving no chance of interfering with the course of justice. Pertinently, the likelihood of reoffending, influencing witnesses and tampering with evidence or being a flight risk are also relevant factors to be considered while deciding the same. 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.

14. 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.

15. Considering the facts of the present case, it leaves no doubt that the element of criminality cannot be ruled out and grant of protective umbrella of pre-arrest bail to the petitioner will obstruct an extensive and effective investigation as it may leave numerous loose ends and gaps. Explicitly put, her

custodial interrogation is an absolute requirement for the discovery of the modus operandi and extracting the truth, in conjunction with the above, the potential of the petitioner to evade justice cannot be undermined. The grant of anticipatory bail will undoubtedly amount to meddling with the sphere of investigation. Thus, when viewed in the light of the afore-referred judgments, this Court finds no merit in this case and as such the same is hereby dismissed.

16. 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

08.12.2023
Hemant

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