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

**CRM-47497-2023 in/and
CRM-M-46226-2023
Date of Decision: 15.11.2023**

Pardeep Kumar @ Prince Bahman

...Petitioner

vs.

Union of India and another

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. Sourabh Goel, Senior Standing counsel with
Ms. Shivani Sahni, Advocate
Ms. Geetika Sharma, Advocate,
Ms. Monika Gupta, Advocate
Mr. Tej Bahadur, Advocate
Ms. Shivali Aggarwal, Advocate
for respondent No.1.

Mr. Amish Sharma, Assistant Advocate General, Punjab.

N.S.Shekhawat J.**CRM-47497-2023**

1. The applicant-petitioner has filed the present application under Section 482 Cr.P.C. for placing on record additional documents as Annexures P-8 and P-9.
2. Application is allowed. Annexures P-8 and P-9 are taken on record.

CRM-M-46226-2023

1. The petitioner has filed the instant petition under Section 438 Cr.P.c. with a prayer to grant anticipatory bail to him in Complaint No.855 titled as “Intelligence Officer, Directorate of Revenue Intelligence, Amritsar vs. Jatinder Singh @ Laddu and another”, dated 12.12.2022, under Sections 8, 21(c), 27, 28, 29, 60 and 61 of NDPS Act, 1985, registered at DRI Amritsar.

2. As per the complaint, a specific intelligence was received by the officials of Directorate of Revenue Intelligence (hereinafter referred to as 'the DRI') at 7.30 am on 12.12.2022 and the same was immediately reduced into writing and was sent to the higher officers. Subsequently, a team of DRI along with panchas witnesses kept surveillance near Hotel Four Seasons, East Mohan Nagar, Amritsar. At about 3.30 p.m. two suspected persons resembling to the intelligence came near the said Hotel. Both of them were intercepted and they tried to escape from the spot. However, one of the persons was overpowered by DRI officials, whereas other person managed to escape from the scene. On inquiry, the said person disclosed his identity as Jatinder Singh @ Laddu son of Sh. Gurmukh Singh, resident of L-3/293, Near Deep Palace, Dasmesh Colony, Sultanwind Road, Amritsar and told the other person's identity as Pardeep Kumar @ Prince Bahman. After serving notice under Section 50 of the NDPS Act, the personal search of Jatinder Singh @ Laddu was conducted and in the presence of independent panchas and a gazetted officer, a black coloured polythene pouch containing some material was recovered from the right pocket of the jacket worn by Jatinder Singh @ Laddu, accused. On opening the polythene pouch, it was found that it contained 264.6 grams of heroin. Later on, the voluntary confessional statement of Jatinder Singh @ Laddu was recorded

at 10.00 p.m. on 12.12.2022 under Section 67 of the NDPS Act, 1985, wherein, he admitted that for monetary benefits and his personal use, he was doing business of supply of heroin and opium with Pardeep Kumar @ Prince Bahman, petitioner since last two years. He also admitted that Pardeep Kumar @ Prince Bahman is a drug trafficker, who runs the racket of heroin smuggling and also admitted the mode and factum of recovery of heroin as mentioned in the Panch-nama dated 12.12.2022. He further admitted that again at 10.00 p.m. on 13.12.2022, voluntary confessional statement of Jatinder Singh @ Laddu was recorded, wherein, he stated as under:-

“That in the morning of 13.12.2022, he went near Gali Gurudwara Toot Sahib with DRI officers to verify and confirm the residential premises of the accused No.2 Pardeep Kumar @ Prince Bahman.

That he went there with DRI team and remotely confirmed the house of the accused No.2 Pardeep Kumar. He stated that besides the work of the drug trade, the accused No.2 Pardeep Kumar is working as a Driver somewhere.

That he had been working as a supplier of heroin & opium for financial gain and in exchange for heroin for personal use for the last two years with the accused No.2 'Prince Bahman', whose real name is Pardeep Kumar.

That accused No.2 Pardeep Kumar @ Prince Bahman gave him Rs.80,000/- for the operation of his father. That a case of 5 grams of heroin was registered against the accused No.2 in 2018 in Police Station, B-Division (Amritsar), that heroin was given to him by the accused No.2 Pardeep Kumar @ 'Prince Bahman'.

That he had been indulged in 04 deals of drugs with the accused No.2 Pardeep Kumar.

That he do not remember the exact time of the said deals of narcotic substances. But all the said deals were made in the last 1-1 ½ years.

That the complexion of the accused No.2 Pardeep Kumar was fair and he had less hair on his head. He has a fit body and has beard on his face.

That the accused No.2 Pardeep Kumar has three mobiles numbers 7814825405, 8379000004 & 9915312941.

That he made a blunder by being the part of the deal of 264-6 grams of narcotic substances on 12.12.2022, which were seized from him by DRI Officers.

That he made this mistake in the greed of money & drugs and he was very guilty of it.”

3. As per the complainant, summons had been issued to Pardeep Kumar @ Prince Bahman under Section 67 of the NDPS Act to join the investigation in the present case, but he failed to appear before the DRI.

4. Learned counsel for the petitioner contends that the name of the petitioner does not find mention in the secret information and he has been arrayed as an accused only on the basis of the disclosure statement of the co-accused Jatinder Singh @ Laddu. Learned counsel further contends that even after the co-accused Jatinder Singh @ Laddu was arrested, a phone call was received by the present petitioner at 5.47 p.m. on 12.12.2022 and it was not possible for the co-accused to call the petitioner, while he was in custody of the DRI officials. Learned counsel further contends that in the present case, the provisions of Article 22 of the Constitution of India and Section 41-B of Cr.P.C. were not complied with. Apart from that, since there was no recovery from the present petitioner, so the provisions of Section 37 of the NDPS Act are not attracted in the facts of the present case and even no presumption under Section 54 of the NDPS Act can be drawn against him. Learned counsel for the petitioner has also placed reliance upon the judgment passed the Hon'ble Supreme Court of India in case **CRA-152 of 2013** titled as “**Tofan Singh vs.**

State of Tamil Nadu”. Learned counsel further contended that he has been falsely involved in the present case by the police with some ulterior motive.

5. On the other hand, learned counsel appearing on behalf of the respondent has vehemently opposed the prayer made by learned counsel for the petitioner. As per him, co-accused Jatinder Singh @ Laddu in his voluntary statements dated 12.12.2022 and 13.12.2022 recorded under Section 67 of the NDPS Act, had admitted the mode and factum of recovery and seizure of 264.6 grams of heroin from him. Jatinder Singh @ Laddu, co-accused also admitted that he was knowingly indulging into this business of possessing, carrying, concealing and dealing with of narcotic drugs i.e. the seized heroin at the instance of Pardeep Kumar @ Prince Bahman. Learned counsel for the respondent further contends that even summons were issued to the petitioner to tender his statement and to join the investigation, but the petitioner managed to flee from his house as he saw the DRI team in his street. Apart from that, the details of the call exchanges between 9517171792 and 9914037253 (both mobile numbers pertaining to the co-accused Jatinder Singh @ Laddu) and 837900004 (pertaining to the petitioner-Pardeep Kumar @ Prince Bahman) clearly establishes that both the petitioners were in constant touch with each other. Still further, in view of the confessional statement made by co-accused Jatinder Singh @ Laddu, both the accused were accomplices in the case of 264.6 grams of heroin smuggling. Apart from that, the present petitioner is a habitual offender and following cases were registered against him:-

(i) FIR No.39, dated 02.05.2016 under Section 18 of NDPS Act, P.S. Sadar, Rajpura, Patiala.

(ii) FIR No.277 dated 29.08.2016 under Section 52-A Prison Act, P.S.Tripuri, Patiala.

(iii) *FIR No.138 dated 20.10.2020 under Section 21, 25, 29 of NDPS Act, P.S. STF, Phase – 4, SAS Nagar.*

6. Resultantly, it was prayed that the bail petition filed by the present petitioner deserves dismissal. Learned counsel for the respondent has also relied upon the law laid down by the Hon'ble Supreme Court in the matter of ***“State of Haryana Vs. Samarth Kumar”***, 2022 *LiveLaw (SC) 622*, wherein the Hon'ble Supreme Court held as follows:-

- “4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in ***Tofan Singh v. State of Tamil Nadu*** reported in (2021) 4 SCC 1.
5. But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.
6. Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.

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 v. 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.”

7. After hearing learned counsel for the parties and perusing the record, this Court is of the considered opinion that the present bail petition deserves dismissal by this Court. It is apparent from the record that the petitioner alongwith his co-accused Jatinder Singh @ Laddu were carrying 264.6 grams of heroin. On getting an intelligence input, both of them were intercepted by the team of DRI. However, only Jatinder Singh @ Laddu was recovered from the spot and the recovery of heroin from the co-accused was commercial in nature. The petitioner managed to flee from the scene. After the arrest of Jatinder Singh @ Laddu, he suffered two confessional statements under Section 67 of the NDPS Act, wherein he assigned specific role to the present petitioner. Section 67 of the NDPS Act has been reproduced below for the ready reference:-

“67. Power to call for information, etc. any officer referred to in Section 42 who is authorized in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provisions of this Act,

(a) call for information from any person for the purpose of

satisfying himself whether there has been any contravention of the provisions of this Act or any rule of order made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.”

8. From a bare perusal of the above referred provision of law, it can be safely held that the statements recorded under this Section can be used as a prima facie evidence. Even the authorities of Directorate of Revenue Intelligence can be equated with a police officers and it can never be held that the statement of co-accused, recorded by the official of DRI, would be completely inadmissible in evidence.

9. Even in his voluntary confessional statements dated 12.12.2022 and 13.12.2022, Jatinder Singh @ Laddu has specifically named the present petitioner as his accomplice and also referred him as a drug trafficker, who runs the racket of heroin smuggling.

10. Apart from that, this Court also does not find any merit in the submission made by learned counsel for the petitioner that the provisions of Section 37 of the NDPS Act would not be applicable to the facts of the present case, while considering the petition under Section 438 Cr.P.C. filed by the petitioner. In fact Section 37 of the Act contains a special provision with regard to grant of bail in respect of the offences enumerated under the said Section and the offences involving commercial quantity. As per Section 37(I)(b) of the Act, it is mandatory that the public prosecutor shall be given an opportunity to oppose the application for bail filed by a person accused of any such offence.

As per Section 37(I)(b)(ii) of the Act, if a public prosecutor opposes the

application, twin conditions have to be specified, while enlarging the accused on bail. The first condition is that the Court has to be specified that there are reasonable grounds to believe that the accused is not guilty of the offence alleged against him. The second condition is that the Court has to be satisfied that there are reasonable grounds for believing that the accused is not likely to commit any offence while on bail. Only on the satisfaction of these twin conditions, the court has power to enlarge the accused on bail. These two conditions are cumulative and not alternative. If either of these two conditions is not satisfied, bar operates and the accused cannot be released on bail. Even various judgments have been passed by this Court as well as the Hon'ble Supreme Court that recording of satisfaction on both the aspects, as noted above, is a sine qua non for granting of a bail to a person, who is accused of the offences satisfied under Section 37(I)(b) of the Act.

11. In the instant case also, there is no dispute raised with regard to the fact that the quantity of heroin seized from the possession of Jatinder Singh @ Laddu amounts to commercial quantity. The fact that no substance has been seized from the possession of the present petitioner is immaterial. Once it has been alleged that the petitioner and his co-accused have committed the offences under Section 21(c), 27, 28, 29 of NDPS Act and the recovery of heroin from the co-accused was commercial in nature, the bar of Section 37 of the NDPS Act would operate.

12. Apart from that the record also reveals that various notices have been issued by the DRI to the present petitioner to join investigation, so that his statement may be recorded under Section 67 of the Act and he may be questioned/interrogated to know the mode and manner of commission of crime,

to effect recovery of incriminating evidence, to know the names of other persons involved in the smuggling, to know the supply of source of heroin and other related investigation.

13. Apart from that, it is also apparent from the record that the following three cases were also earlier registered against the present petitioner and his antecedents are not clean. It has been rightly pointed out by the learned counsel for the respondent that the present petitioner is a drug trafficker, who runs the racket of heroin smuggling. Thus, keeping in view the gravity of the offence and the aforesaid reasons, the petitioner does not deserve the concession of anticipatory bail and the considered opinion of the Court, his custodial interrogation will be required to take the investigation to its logical end.

14. The present petition is ordered to be dismissed.

15.11.2023

hemlata

(N.S.SHEKHAWAT)
JUDGE

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