

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-51260-2022 (O&M)
Date of decision: 12.01.2023

VIKASH GURJAR

....Petitioner(s)

Versus

STATE OF HARYANA

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG Haryana.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in FIR No.0822 dated 22.09.2022, under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 registered at Police Station Sirsa City, District Sirsa.

As per prosecution version, 25 grams of heroin had been recovered from a youth namely Ajay @ Gholu, who on interrogation disclosed that the contraband was given to him by Vikash @ Gholu for selling the same and that they had to distribute the profit thereof.

Learned counsel would contend that the petitioner was not named in the FIR and he was nominated on basis of the disclosure statements of co-accused Ajay, who was arrested at the spot, alongwith the alleged contraband. He places reliance on the judgment in the case of **Tofan vs. State of Tamil Nadu**, 2020 AIR (Supreme Court) 5592 to contend that the disclosure statement is inadmissible in

evidence. 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.

On advance notice, learned State counsel puts in appearance and opposes the prayer on the ground that the co-accused, who had named the petitioner, had stated that the supplier of the contraband recovered from him was the petitioner and that they had to share the profit thereof. Custodial interrogation of the petitioner 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 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.”

In the case in hand, the name of the petitioner has surfaced based on the disclosure statements of co-accused, Ajay, who was arrested at the spot and recovery of the contraband was effected from him. He had categorically disclosed that the petitioner was the supplier of the said contraband recovered from him and that they were to share the profit amongst themselves. The sole ground taken by the petitioner 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 held by Hon'ble The Supreme Court of India in the cases of **Prabhulal** and **Samarth Kumar** (supra). Thus, the allegations against the petitioner call for a deeper probe, to unearth the modus operandi, source of origin, chain of supply and also to find out the involvement of other persons therein, so as to also eradicate the menace of drug proliferating, for which the custodial

interrogation of the petitioner is required. The grant of pre-arrest bail in the present case shall be detrimental to the investigation.

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 petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

January 12, 2023

S.Sharma(syr)

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