

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

104

CRM-M-50985-2023 (O&M)

Date of decision: 09.10.2023

Mukesh

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gaurav Arora, Advocate for the petitioner

Mr. Jagdish Manchanda, Addl. AG Haryana

AMAN CHAUDHARY. J.

1. Prayer in the second petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in FIR No.94, dated 20.02.2022, registered under Sections 21 and 29 of NDPS Act, 1985, at Police Station Kalanaur, District Rohtak.

2. The factual matrix of the case as per the present FIR are that on 20.02.2022, when in connection with patrolling duty the investigating officer along-with other officials were present near Juraim bypass, received secret information that accused Komal is selling narcotic substance in front of her house, they reached the spot and found her present there. After giving a notice under Section 50 NDPS, she gave her consent to be checked by a gazetted officer. Upon her personal search, 13.58 grams of heroin were recovered from her coat, which was taken into possession vide separate memo. She in her disclosure statement

revealed that the contraband was purchased by her husband (petitioner herein) and he had handed over to her.

3. Learned counsel for the petitioner contends that the name of the petitioner has surfaced based on disclosure statement of co-accused, Komal, from whom the alleged contraband has been recovered. 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. 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 this is the 2nd petition filed by the petitioner seeking anticipatory bail, however, when in the first one, this Court was not inclined to grant relief after the same was argued for some time by the learned counsel, as recorded in the order dated 06.09.2023, it was disposed of on instructions from the petitioner, who was ready to surrender before the trial Court. There is no new ground urged to entertain the present petition. Insofar as the merits are concerned, the contraband in question was recovered from the co-accused Komal, who was nabbed with 13.58 grams of heroin by the police party on a secret information received that she was selling narcotic substance in front of her house. She had specifically named her husband i.e., the petitioner, as the one who had purchased the contraband and supplied the same to her. The case is still being investigated and to find out the source and delivery of the contraband, his custodial interrogation is essential. There is every apprehension of him repeating the offence, fleeing from justice and tampering

with the evidence. Thus, the learned state counsel prays for the dismissal of the instant petition.

5. Heard the learned counsel on either side and perused the file.

6. At the outset, it is relevant to note that when this Court was on the verge of dismissing the petition after having heard the arguments addressed on behalf of the petitioner for some time, in particular, when a pertinent fact of him having been named by none other than his own wife, specifically having disclosed that the contraband recovered from her to have been purchased by him and handed over to her, as also that her name had come up in the secret information, that she was selling the contraband in front of her house, whereafter on a raid having been conducted, she was apprehended alongwith the contraband. However, on a prayer made, on instructions received from the petitioner by the learned counsel indicating his willingness to surrender, the petition was disposed of. In this second petition or even during the course of arguments, neither any new ground has been submitted nor the reason for not surrendering before the trial Court was provided. Even otherwise, a Division Bench of this Court with regard to entertaining second or subsequent bail petition under Section 438 CrPC, first having been withdrawn had observed that it 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. It was held that, “However, the second/subsequent bail application under Section 438 Cr.P.C. would be maintainable only if there is substantial material and substantive change in the fact situation and circumstances of the case due to subsequent events or in law.” [See **Manjinder Kaur vs. State of Punjab**, CRM-M-40916-2022 decided on 30.01.2023].

7. 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.”

8. The name of the petitioner had surfaced in the disclosure statement of the abovementioned co-accused, who happens to be his wife. Hon’ble The Supreme Court in the case of **State of Haryana vs. Samarth Kumar**, 2022 (3) R.C.R. (Criminal) 991 had 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.”

9. In the case at hand, though the petitioner did not figure in the FIR, however, serious allegations of indulging in drug trade as he had purchased the contraband that was handed over by him to his wife for selling the same and her name, having specifically figured in the secret information, was apprehended at the spot alongwith the alleged contraband, whereafter, she in her disclosure statement disclosed his name and the above facts. The submission for grant of anticipatory bail made that there is only disclosure statement of co-accused against the petitioner, which is inadmissible, has no force, particularly in view of the peculiar facts of the case as also the decisions of Hon’ble The Supreme Court in the cases of **Prabhulal** and **Samarth Kumar** (supra). The custodial interrogation of the petitioner is stated to be necessary to unearth the nexus of sale and purchase of heroin, in which he is allegedly indulging and also to ascertain the involvement of other persons.

10. 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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11. 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.”

12. 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. The possibility of the accused

reoffending, influencing witnesses and tampering with evidence or being a flight risk are also relevant factors to be considered while deciding the same.

13. 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 foregoing facts and circumstances reveal that the element of criminality cannot be ruled out, and grant of protective umbrella of pre-arrest bail to the petitioner will impede the thorough and effective investigation as it may leave many loose ends and gaps as also the apprehension of him re-offending. His custodial interrogation is necessary to discover the modus operandi and elicit the truth, coupled with the above, it cannot also be ruled out that the petitioner will not influence and threaten the witnesses or tamper with the evidence, or flee from justice. Thus, the present case when viewed in the light of the afore-referred judgments, this Court finds it to be a meritless case deserving to be and is 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

October 09, 2023

M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No