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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53328-2023
Date of decision: 28.11.2023

CHHOTI KAUR @ JASWINDER KAUR

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. L. S. Sekhon, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.131 dated 27.09.2023, under Sections 20 and 29 of the NDPS Act, registered at Police Station Sadar Sangrur, District Sangrur, Punjab.
2. Learned counsel for the petitioner submitted that the petitioner is a lady of the age of 29 years and she has been nominated in the present case on the basis of disclosure statement of co-accused, namely, Rani Kaur from whom there was a recovery of 150 grams of *ganja*. He further submitted that the name of the petitioner was nominated purely on the basis of disclosure statement of aforesaid co-accused and the disclosure statement of co-accused is not admissible in evidence *per se* and therefore, the petitioner may be considered

for the grant of anticipatory bail. He also submitted that although the petitioner is involved in some other cases but in the present case the petitioner has been falsely implicated by the police.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab while referring to the affidavit dated 05.11.2023 filed by the State submitted that even if the petitioner is a lady, no compassion should be shown to her in view of the fact that the petitioner is a habitual offender. While referring to para No.7 of the aforesaid affidavit he further submitted that the petitioner is involved in as many as 5 more cases under the NDPS Act. Para No.7 of the aforesaid affidavit is reproduced as under:-

“7. That the following cases of NDPS Act found registered against the petitioner Chhoti Kaur alias Jaswinder Kaur:

- i) FIR no.66 dated 08.04.2020 under section 20 NDPS Act P.S. Sadar Sangrur (Pending Trial).*
- ii) FIR no.109 dated 13.10.2020 under section 20/61/85 NDPS Act P.S. Cheema (Pending Trial).*
- iii) FIR no.28 dated 11.01.2021 under section 20 NDPS Act P.S. Hansi (Hissar) Haryana (Pending Trial).*
- iv) FIR no.141 dated 01.07.2021 under section 20/29/25 NDPS Act P.S. City Sunam (Pending Trial).*
- v) FIR no.68 dated 13.07.2019 under section 21 NDPS Act P.S. STF, SAS Nagar Mohali. (Convicted)”*

4. While referring to the aforesaid affidavit, the learned State counsel submitted that in aforesaid FIR No.68 dated 13.07.2019, the petitioner has even been convicted and rather she had confessed her guilt and was sentenced to undergo rigorous imprisonment already undergone and also to pay a fine of Rs.5,000/- vide judgment dated 17.08.2023 passed by the learned Judge Special

Court, Sangrur. He also submitted that the aforesaid FIR No.68 dated 13.07.2019 in which the petitioner was convicted, she was involved in recovery of *heroin*, whereas in other FIRs she was involved in *ganja*. He further submitted that so far as the argument raised by the learned counsel for the petitioner with regard to the fact that the petitioner was nominated on the basis of disclosure statement of co-accused is concerned, the same plea is not available to the petitioner in view of the judgment of the Hon'ble Supreme Court in **State of Haryana versus Samarath Kumar, 2022 (3) RCR (Criminal) 991** because in the present case the prayer of the petitioner is for grant of anticipatory bail. He further submitted that the petitioner had been trading in narcotics substances and therefore, she is required for custodial interrogation for the purpose of qualitative investigation and also to ascertain the source from where the aforesaid contraband was brought.

5. I have heard the learned counsel for the parties.

6. The prayer in the present petition is for grant of anticipatory bail to the petitioner. As per the FIR, the other co-accused, namely, Rani Kaur was apprehended along with 150 grams of *ganja* and she had disclosed the name of the petitioner and stated that she purchased the aforesaid *ganja* from the present petitioner. The same is so reflected in para No.6 of the aforesaid affidavit filed by the State. For the purpose of considering the prayer of the petitioner, all the factors are required to be seen for the purpose of considering the grant of anticipatory bail. So far as the argument raised by the learned counsel for the petitioner that the name of the petitioner was nominated on the basis of disclosure statement of co-accused and therefore, on this ground anticipatory

bail should be granted to her is not sustainable in view of the law laid down by the Hon’ble Supreme Court in Samarath Kumar’s case (supra) since the present case pertains to grant of anticipatory bail and not regular bail. The petitioner is stated to be involved in as many as five more cases out of which in one case pertaining to *heroin*, she has been convicted also. The business and trading of narcotics in the State of Punjab is rampant. The source from where the aforesaid contraband is brought is essential to be ascertained. The argument which has been raised by the learned State counsel that considering the aforesaid facts and circumstances of the present case where the source has to be ascertained, the custodial interrogation of the petitioner is required for qualitative investigation carries weight and cannot be ignored.

7. Therefore, considering the aforesaid totality and circumstances of the present case, this Court does not find any merit in the present petition and the same is hereby dismissed.

8. However, anything observed hereinabove shall not be treated as an expression of opinion on the merits of the case and is meant for the purpose of deciding the present petition only.

28.11.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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