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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56259-2023(O&M)

Date of Decision:08.11.2023

Satish Kumar

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Mohit, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in FIR No.114 dated 28.05.2021, under Sections 21C, 29 (added later on) of NDPS Act, registered at Police Station Bahu Akbarpur, District Rohtak (Haryana).

2. Learned counsel for the petitioner has submitted that the petitioner was falsely implicated in the present case and the present is a successive bail petition and the anticipatory bail petition filed earlier by the petitioner was dismissed on merits vide Annexure P-5 in CRM-M-33464-2021. He further submitted that the aforesaid anticipatory bail was dismissed in view of the judgment of Hon'ble Supreme Court in *State of Haryana vs. Samarath Kumar, Crl. Appeal No.1055 of 2022* whereby it was held that although disclosure statement of a co-accused is not admissible in evidence but that would apply only for the purpose of regular bail and not for the anticipatory

bail. He submitted that thereafter the Hon'ble Supreme Court has granted anticipatory bail in ***Vijay Singh versus State of Haryana, Special Leave Petition (Crl.) No.1266 of 2023*** and therefore, the present petition is maintainable.

3. I have heard the learned counsel for the petitioner.

4. Before proceeding further, it will be relevant to reproduce the earlier order dated 26.07.2022 passed by this Court by which the anticipatory bail filed by the petitioner was dismissed on merits:-

“The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.114 dated 28.5.2021 under Section 21C, 29 (added later on) of NDPS Act, registered at Police Station Akbarpur, District Rohtak (Haryana).

*It has been submitted by the learned counsel for the petitioner that in pursuance of the order passed by this Court on 27.8.2021, the petitioner has joined the investigation and, therefore, the interim order granted to the petitioner may be confirmed. He submitted that in the present case, the petitioner has been falsely implicated and he was on the disclosure statement of the co-accused, namely, Dharminder and in view of the law laid down by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1**, the interim bail granted to the petitioner may be confirmed.*

On the other hand, the learned State counsel has stated that although in pursuance of the order dated 27.8.2021, the petitioner has joined the investigation but he has not cooperated with the investigation process. He submitted that one co-accused, namely, Dharminder was arrested on the spot in the present case and there was a recovery of 535 grams of Heroin from him and thereafter the aforesaid Dharminder on his disclosure statement named two persons, namely, Nanha co-accused and the present petitioner, namely, Satish Kumar and the learned State counsel has also pointed out to the affidavit filed by the State in which it has been stated that in the disclosure statement, co-accused, Dharminder has stated that Nanha had given Rs.50,000/- to him and the petitioner had given Rs.2,50,000/- to him

for procuring Heroin and in the present case the custodial investigation of the petitioner was required in order to ascertain and to know the names of other persons involved in the incident and how many times the petitioner had given money for supply of Heroin. The learned State counsel while referring to the affidavit filed by the State further submitted that the petitioner is a habitual offender and he is involved in two more cases out of which one is pertaining to NDPS Act which is registered in the State of Orrisa and details have been mentioned in the affidavit itself.

*He further relied upon the judgment of the Hon'ble Supreme Court in **State of Haryana Vs. Samarath Kumar, Crl. Appeal No.1055 of 2022** and submitted that the reliance placed by the learned counsel for the petitioner in Tofan Singh's case (Supra) would not be applicable in the present case since it is a case of anticipatory bail and not a regular bail and, therefore, in view of the aforesaid legal position as held by the Hon'ble Supreme Court in the aforesaid case such a plea is not available to the petitioner. He further submitted that the quantity involved in the present case was a commercial quantity and there is no ground available with the petitioner to make a departure from the bar contained under Section 37 of NDPS Act. He further submitted that since the petitioner is a habitual offender there is every likelihood that in case his interim bail is confirmed then he may repeat the offence or may abscond from justice. He further submitted that joining of the investigation was only an empty shell because he did not disclose anything to the IO with regard to the source and his modus operandi in the present case.*

I have heard the learned counsels for the parties

The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Tofan Singh's case (Supra) and on the other hand the learned State counsel has relied upon the latest judgment in the case of Samarth Kumar's case (Supra). As per the latest judgment, the plea of disclosure statement of co-accused can be made available to the regular bails but not to the anticipatory bail. Apart from the same, it has been categorically stated by the State counsel that the recovery in the present case was 535 grams of Heroin from the co-accused and the petitioner had paid an amount of Rs.2,50,000/- to him. The petitioner is also involved in one other

case under the NDPS Act registered in the State of Orrisa. The submission made by the learned State counsel that the petitioner has not cooperated with the investigation process cannot be ignored and would also become a ground for dismissal of anticipatory bail petition. The learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of NDPS Act.

Consequently, finding no merit in the present, the same is, hereby, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.”

A perusal of the aforesaid order passed by this Court would show that it was not only on the basis of judgment of the Hon'ble Supreme Court in ***State of Haryana vs. Samarath Kumar (Supra)*** that his anticipatory bail was dismissed but the same has been dismissed on merits while considering other factors as well including the factor that the petitioner earlier was also involved in one more case under the NDPS Act registered against him in the State of Orrisa. Hon'ble Supreme Court in ***G.R. Ananda Babu Versus The State of Tamil Nadu and another [2021(1) RCR (Criminal) 843]*** has held that once a petition for grant of anticipatory bail was dismissed on merits, then the second successive bail petition would not be maintainable except if there is any strong reason or change circumstance. The relevant portion of the aforesaid judgment is reproduced as under:-

“7. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge”.

5. After hearing the learned counsel for the petitioner, this Court is of the view that the present successive anticipatory bail petition is not maintainable because no strong reason etc. has been shown by the petitioner in this regard.
6. Consequently, the present petition is hereby dismissed.

08.11.2023

rakesh

Whether speaking

Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

:

:

Yes/No

Yes/No