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

CRM-M-57848-2023
Date of decision : 22.11.2023

JASWINDER SINGH @ JASSA

....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sunny K. Singla, Advocate for the petitioner.

Mr. Jaswinder S. Arora, DAG, Punjab with ASI Manjit Singh.

PANKAJ JAIN, J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case F.I.R. No.77 dated 23.07.2022 registered for the offences punishable under Sections 22, 29, 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Sandaur, District Malerkotla.

2. Custody Certificate of the petitioner has been filed today in Court. The same is taken on record.

3. Counsel for the petitioner submits that the petitioner was nominated on the disclosure made by co-accused Deepak Kumar @ Deepu. and Varinder Singh. He further refers to order dated 20.09.2022 passed in CRM-M No.36011 of 2022 whereby the petitioner was granted indulgence

and his arrest was stayed in a petition filed under Section 438 Cr.P.C. However, despite the fact that the petitioner joined investigation yet his pre-arrest bail was declined by the Co-ordinate Bench vide order dated 17th of July, 2023 observing as under :

“1. These petitions have been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioners in FIR No.77 dated 23.07.2022, registered under Sections 22, 29, 61 and 85 of the NDPS Act, at Police Station Sandaur, District Malerkotla.

2. The factual matrix of the case as per the present FIR are that on 23.07.2022, when in connection with checking of miscreants and suspected vehicles, the investigating officer, along-with other officials were going from Malerkotla to Sandaur and reached the area of village Shervanikot, at about 8.15 P.M, an informer gave them secret information that accused Deepak Kumar, Varinder Singh and Jora Singh are indulging in sale of intoxicant syrup and tablets by transporting the same in a car make-Maruti Alto bearing registration no. DL-9CN-4095, in nearby villages and, if the area is barricaded, a huge quantity of contraband can be recovered from them. The above mentioned car was intercepted, and the driver of the car tried to flee the spot, but they all were apprehended. The driver disclosed his name as Jora Singh, the person sitting on the co-passenger seat as Deepak Kumar @ Deepu and the person sitting on the rear seat as Varinder Singh. On checking the plastic transparent ‘lifafa’ carried by co-accused Deepak Kumar, 11 intoxicant vials make Omrex 100 ml, 21 vials make Maverex 100 ml, (total 32 vials) and 50 strips of intoxicant tablets make Wallace Carisoma (total 500 tablets) were recovered, which on being weighed, came out to be 3 kgs 500 gms, which was taken into possession vide separate memo. Two co-accused in their disclosure statements, named the present petitioners.

3. Learned counsel would contend that the petitioners have been falsely implicated in the case. No recovery has been affected

from the petitioners. Their names surfaced based on the disclosure statements of co-accused Deepak Kumar @ Deepu and Varinder Singh, which are inadmissible in evidence, reliance in that regard 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 petitioners are ready and willing to join the investigation and cooperate with the investigating agency. They are not involved in any other case under the NDPS Act.

4. Learned State counsel opposes the prayer of the petitioners. He refers to the status report dated 17.11.2022, filed by Kuldeep Singh, PPS, DSP Sub-Division Malerkotla, wherein serious allegation have been levelled against the petitioners regarding their direct involvement by co-accused, namely, Deepak Kumar @ Deepu and Varinder Singh, that they, along with the present petitioners used to purchase the intoxicant tablets and bottles at cheap rates from Delhi in the car of petitioner-Arjun Singh. The case is still being investigated and to find out the source, delivery of the contraband, the custodial interrogation of the petitioners is required. There is every apprehension of them fleeing from justice, as also committing similar offences and tampering with the evidence.

5. Heard.

6. 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.”

7. Though, there is no dispute that the names of the petitioners

had surfaced in the disclosure statements of the abovementioned co-accused, however, in this context also 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.”

8. This Court in CRM-M-44196-2022 titled as **Gurpreet Singh vs. State of Punjab**, decided on 23.09.2022, had dismissed a petition for grant of anticipatory bail, wherein also the petitioner was not named in the FIR but involved on basis of the disclosure statement of his co-accused, from whom commercial quantity of contraband had been recovered, against which Special Leave to Appeal (Crl.) No. 9680/2022 filed was dismissed by Hon'ble The Supreme Court vide order dated 07.11.2022.

9. In the case at hand, though the petitioners did not figure in the FIR, however, serious allegations of purchasing and selling intoxicant substances from Delhi, were levelled against them in the disclosure statements of the co-accused, from whom 11 intoxicant vials make Omrex 100 ml, 21 vials make Maverex 100 ml, total 32 vials and 50 strips of intoxicant tablets make Wallace Carisoma (total 500 tablets) which weighed 3 kgs 500 gms, have been

recovered, which falls in the category of commercial quantity. Furthermore, the car of petitioner-Arjun Singh was said to be used in the transportation of contrabands from one place to other. The sole ground taken for grant of anticipatory bail that the disclosure statements of co-accused are inadmissible, has no force, in view of the decisions of Hon'ble The Supreme Court in the cases of **Gurpreet Singh, Prabhulal and Samarth Kumar (supra)**. The custodial interrogation of the petitioners is necessary to unearth the nexus of smuggling, in which they are indulged 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.
- xxx xxx xxx”

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. 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.

13. Keeping in view the facts and circumstances of the case and the judgments referred to above, grant of protective umbrella of pre-arrest bail to the petitioners will hamper the thorough and effective investigation to discover the modus operandi and elicit the truth, that coupled with the apprehension that cannot be ruled out of the petitioner influencing and threatening the witnesses or tampering with the evidence, or fleeing from justice, this Court is not inclined to grant the concession of anticipatory bail to the petitioners.

14. As a sequel, the present petitions being devoid of merit, are hereby dismissed.”

4. Reliance is being placed upon the order passed by the same Bench, dated 9th of November, 2023 whereby one of the main accused Varinder Singh who was arrested from the spot has been granted concession of regular bail. It has been contended that even after conclusion of investigation the only evidence collected by the investigating agency

against the petitioner is in the form of disclosure made by co-accused Deepak Kumar @ Deepu and Varinder Singh which alone cannot be sufficient to invite conviction. Thus, he submits that once co-accused on whose disclosure the petitioner was nominated i.e. Varinder Singh stands admitted to bail the petitioner would be entitled for the same relief.

5. State Counsel does not dispute the aforesaid factual assertions made by counsel for the petitioner based on record.

6. I have heard counsel for the parties and have gone through records of the case.

7. Without commenting on the merits of the case, keeping in view the incarceration suffered by the petitioner i.e. more than 2 months, 24 days, the nature of evidence against the petitioner and keeping in view the fact that the main accused already stands admitted on regular bail, the present petition is allowed. The petitioner is ordered to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.

- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.
- (vii) The petitioner shall not in any manner try to delay the trial.

9.. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

10. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

November 22, 2023
Dpr (Pankaj Jain)
Judge

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