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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision 30.11.2023

Mohinder Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Ruhani Chadha, Advocate for the petitioner.

ALOK JAIN, J.

1. The present petition has been preferred *inter alia* praying for grant of anticipatory bail to the petitioner in FIR No.333 dated 25.10.2023, registered with Police Station Special Task Force District STF Wing, SAS Nagar, under Sections 21 of Narcotic Drugs and Psychotropic Substance Act, and offence under Sections 21-C, 27, 29 of Narcotic Drugs and Psychotropic Substance Act, 1985 added later on.

2. Learned counsel for the petitioner submits that the petitioner was not named in the FIR and he has been entangled in the present case as he was on loggerheads with the Police Department due to his earlier business of liquor. He further submits that the disclosure statement being relied upon by the prosecution is an outcome of the pressure created on his son, who has been arrested with the contraband.

3. Learned State counsel submits that the son of the petitioner was arrested with recovery of 820 grams of heroin which is commercial in nature and as per the disclosure statement, the son of the petitioner has

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named his father, who brought him into this business and he has been supplying the contraband to various clients at the behest of his father.

4. At this stage, learned counsel for the petitioner relies upon the judgment passed by the Hon'ble Supreme Court of India in ***Tofan Singh Vs. State of Tamil Nadu(2021) 4 SCC 1*** and further buttress his arguments that the petitioner has clean antecedents and has no history of ever being involved in an offence punishable under the NDPS Act. However, at this stage, learned State counsel submits that there are six cases against the petitioner out of which the petitioner has been acquitted in three cases but three remaining cases are still pending against him.

5. Heard learned counsel for the parties. The facts which are relevant for deciding the present bail petition are as follows:

- i. Recovery of more than three times the commercial quantity of the contraband from the son of the petitioner i.e. 820 grams.
- ii. Admission by the son of the petitioner that his father is in possession of much higher quantity of contraband than what is already recovered and allegations that the son of the petitioner was supplying contraband at the behest of his father.
- iii. Petitioner not having clean antecedents i.e. still having three cases pending against him.

6. The Hon'ble Supreme Court in the case of ***Union of India Vs. Rattan Malik (2009) 2 SSC 624*** while cancelling the bail of the accused persons held that merely making a finding on the possession of the contraband by the Court does not fulfill the parameters of Section 37(1) (b) of the NDPS Act while deciding bail petitions.

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7. The Hon'ble Supreme Court of India after considering the ratio in Tofan Singh's Judgment (*supra*) in the case of ***Union of India through Narcotics Control Bureau Vs. Md. Nawaz Khan 2021 (10) SCC 100*** stated in Para 25 as under:

“mere absence of possession of the contraband on the person does not absolve it of the rigors of Section 37 of the NDPS Act.”.

8. In the present case, the recovery is commercial in nature and the relationship between the petitioner and the person arrested is that of father and son. It is trite law that every case has to be considered on its own merits and circumstances and there is no straightjacket formula in deciding such petitions. Thus, keeping in view the aforesaid judgments and the peculiar facts of the case, Tofan Singh (*Supra*) would not come to the rescue of the petitioner as there are valid reasons, independent of the statement by the son of the petitioner to deny bail on the basis of the material that has emerged at this stage. Moreover, the investigation is at the initial stage and hence, this Court does not find appropriate to grant the extraordinary concession of anticipatory bail to the petitioner. Accordingly, the same is dismissed.

8. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case.

(ALOK JAIN)
JUDGE

30.11.2023

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Whether speaking/reasoned:-
Whether Reportable:-

Yes
Yes