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

CRM-M-685-2024

Date of decision: 07.05.2024

Shalinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Munish Gulati, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 03 dated 15.01.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (for brevity, NDPS Act), (Section 29 of NDPS Act added later on) Police Station Lakho Ke Behram, District Ferozepur.

2. The allegations in nutshell are that police received secret information on 15.01.2022 and then police officials laid barricades and apprehended one Honda City car in which 4 persons were travelling but all the occupants of the car tried to escape out of which Raj Preet Singh and Loveveer Singh were apprehended at the spot but two other persons succeeded in escaping and one of them was identified as Rajwinder Singh @ Happy son of Gurjant Singh. Police recovered 250 grams each of heroin at instance of Raj Preet Singh and Loveveer Singh, respectively at the spot.

Subsequently, Rajwinder Singh @ Happy was also arrested in this case. The petitioner was nominated as accused on the basis of the disclosure statement suffered by aforesaid Raj Preet Singh and Loveveer Sing.

3. The counsel for the petitioner submits that the petitioner is falsely implicated in the present case on the basis of the alleged disclosure made by co-accused and the veracity of the said disclosure will be tested during the trial. It is further submitted that it is not clear as to on which date the alleged disclosure statement was suffered by the co-accused against the present petitioner. That even the challan submitted by police under Section 173 Cr.P.C is not clear with regard to any such alleged disclosure statement made by co-accused against the petitioner. It is further submitted that even otherwise any such disclosure statement made by co-accused is inadmissible in evidence against the petitioner. In this regard counsel for the petitioner has relied upon **Tofan Singh Vs. State of Tamil Nadu**, (2021) 4 SCC 1. The counsel for the petitioner further submits that the petitioner, who is having no criminal history, is ready to join the investigation with the police.

4. The present petition is contested by the State counsel who submits that the present case is relating to recovery of commercial quantity of heroin from co-accused Raj Preet Singh and Loveveer Singh who were arrested at the spot. During investigation, the petitioner was nominated as accused on the basis of disclosure statement made by co-accused and that the petitioner is required by the police for proper investigation of the case. It is further submitted that the present case is relating to recovery of commercial quantity of contraband and thus is covered under Section 37 of the Act and thus the petitioner is not entitled to get concession of

anticipatory bail, even if, the petitioner is having no criminal history.

5. I have considered the submissions made by counsel for the parties.

6. In the instant case commercial quantity of contraband was recovered from co-accused Rajpreet Singh and Loveveer Singh and the petitioner has been nominated as accused on the basis of the disclosure statement made by co-accused Raj Preet Singh and Loveveer Singh against him. The counsel for the petitioner has raised doubt with regard to veracity of the alleged disclosure statement. In the light of the decision of the Hon’ble Supreme Court dated 20.07.2022 in **State of Haryana Vs. Smarth Kumar**, Crl. Appeal No. 1005 of 2022, at this initial stage, the petitioner cannot take advantage of the law laid down in **Tofan Singh(supra)**. Further, rigors of Section 37 of the Act are applicable to the present case.

7. In the light of the above, this Court is of the view that present petition deserves to be dismissed as the custodial interrogation of the petitioner is necessary for proper and effective investigation by the police. Consequently, the present petition is hereby dismissed. However, any observations made herein above are not to be considered as expression of opinion on the merits of the case.

07.05.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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