

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRM-M-4623 of 2024(O&M)
Date of Decision: 30.01.2024

Sanjiv Kumar @ Sonu

...Petitioner

Versus

State of Punjab

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Manjinder Singh Saini, Advocate
For the petitioner.

Mr. Jaspal Singh Guru, AAG Punjab.

KARAMJIT SINGH, J.

1. The present petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case having FIR No. 139 dated 20.11.2023, registered under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act (for brevity, the NDPS Act) at Police Station Haryana, District Hoshiarpur.

2. The allegations in nutshell are that police apprehended co-accused Gursimranjit Singh and recovered 254 grams of heroin from him on 20.11.2023. The name of the petitioner surfaced in the disclosure statement made by aforesaid Gursimranjit Singh. Resultantly, the petitioner is nominated as accused.

3. The counsel for the petitioner, *inter alia*, contends that the petitioner is falsely implicated in the present case on the basis of alleged disclosure statement made by the co-accused. The counsel for the petitioner further submits that the said disclosure statement will be tested during trial.

The counsel for the petitioner further submits that the petitioner is ready to join the investigation with the police. The counsel for the petitioner placed reliance on **Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1**, in support of his contentions.

4. The present petition is resisted by the State counsel who submits that commercial quantity of contraband has been recovered from co-accused Gursimranjit Singh and the name of the petitioner appeared in his disclosure statement. The State counsel further submits that petitioner is having criminal history and is also involved in two another cases under NDPS Act. The petitioner cannot take benefit of decision of Hon'ble Supreme Court in Tofan Singh's case (supra). In support of his contentions, the State counsel referred to the ratio laid down by Hon'ble Apex Court in **State of Haryana Vs. Samarth Kumar**, 2022(3) RCR(Cr.) 991. The State counsel further submits that the custodial interrogation of the petitioner is necessary for proper investigation of this case.

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

6. There is no doubt that the FIR in this case was registered against co-accused Gursimranjit Singh from whom the police recovered commercial quantity of heroin and as such strict provisions of Section 37 of the Act are applicable to the instant case. The name of the petitioner surfaced in the disclosure statement made by co-accused Gursimranjit Singh. Admittedly, the petitioner is also facing two other cases under the NDPS Act. In the light of the law laid down in **Samarth Kumar's case** (supra), the relevancy and admissibility of the disclosure statement made by co-accused against the present petitioner cannot be considered at this initial stage.

Further, the embargo provided in Section 37 of the Act is also attracted to the instant case. Furthermore, the recovery effected from the co-accused being of commercial quantity of heroin, this Court is of the view that the custodial interrogation of the petitioner is necessary for proper and effective investigation of the case.

7. In light of the above, the present petition is hereby dismissed. However, observations made hereinabove are not to be construed as opinion on the merits of the case.

30.01.2024
Jiten

(KARAMJIT SINGH)
JUDGE

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