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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-31388-2024 (O&M)
Date of decision: 19.07.2024

Jaspreet Singh @ Jassa ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. A. P. S. Deol, Sr. Advocate with
Mr. Arshdeep Singh Brar, Advocate and
Mr. Anmol Grewal, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 438 Cr.P.C., is for grant of anticipatory bail to the petitioner in FIR No. 42 dated 13.03.2024, registered under Sections 21 and 29 (added later on) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'the Act'*) at Police Station City Moga, District Moga.
2. Brief facts of the case relevant for the disposal of the present petition are that on 13.03.2024, co-accused Dharampreet Singh @ Dhammi, Sandeep Singh Bhatti and Sukhchain Singh @ Chaina were was arrested by the police and recovery of 5.5 kgs. heroin was effected from them. The petitioner has been nominated in this case on the basis of the disclosure statement suffered by co-accused Sandeep Singh Bhatti. Apprehending his

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arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Judge, Special Court, Moga but the same had been dismissed, vide order dated 14.05.2024.

3. Learned senior counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner was in Amritsar on 13.03.2024, when the present FIR was registered. It is further argued that simply because the petitioner was named in the secret information, it cannot be conclusively inferred that the petitioner owned the recovered contraband. The disclosure statement suffered by the co-accused is also not admissible in evidence against the petitioner. Though, there are two more cases under the Act against the petitioner but in one case, he is on regular bail and in another case, he stands acquitted. Learned senior counsel for the petitioner has also argued that since the petitioner has been nominated in this case with the aid of Section 29 of the Act, therefore, the rigors of Section 37 of the Act are not attracted against him. Hence, it is urged that the petition deserves to be allowed. To fortify his arguments, learned senior counsel for the petitioner has relied upon the authorities cited as ***Pala Singh vs. State of Haryana : 2015 (6) RCR (Criminal) 91*** and ***Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence : 2018 (3) RCR (Criminal) 954***.

4. *Per contra*, learned State counsel has argued that though the petitioner has been nominated in this case on the basis of the disclosure suffered by the co-accused but his antecedents are not clean. He is already involved in two more cases under the NDPS Act, out of which, he is facing trial in one case and another case, he stands acquitted. It is argued that since the quantity of the contraband involved in this case falls under the ambit of

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commercial quantity, hence, the rigors of Section 37 of the Act will be attracted in this case. It is, therefore, urged that the petition is liable to be dismissed.

5. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Sandeep Singh @ Bhatti, who was arrested at the spot along with co-accused Dharampreet Singh @ Dhammi and Sukhchain Singh @ Chaina and recovery of 5.5 kgs. of heroin was effected from the packets, which they were carrying in their car. The quantity of the alleged contraband obviously falls under the commercial quantity. As per disclosure statement suffered by the aforesaid co-accused, the petitioner had given him an amount of Rs. 9 Lakhs and instructed to hand over the said amount to a person, who would meet him at Rajasansi, Amritsar, in exchange of 06 packets of heroin. In pursuance thereof, on 12.03.2024, co-accused Sandeep Singh @ Bhatti along with aforesaid two co-accused went to Amritsar and received 06 packets of heroin after handing over the aforesaid amount of Rs. 9 Lakhs to the said person. After his return to Moga, he was contacted by the petitioner to hand over him 500 grams of heroin as he was in urgent need of that, which he supplied to him. On the next day i.e. 13.03.2024, all the three co-accused were going to supply the said contraband to the petitioner but they were apprehended by the police party.

7. Admittedly, the petitioner is already involved in two more cases under the Act, though in one case, he is stated to be acquitted by the trial

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Court. Learned senior counsel for the petitioner has raised an argument that since the petitioner has been arraigned as an accused in this case with the aid of Section 29 of the Act, the rigors of Section 37 of the Act would not create any bar to grant him protection under Section 438 of Cr.P.C. The questions that arises before this Court for consideration is as to whether the rigors of Section 37 of the Act would be attracted in this case and as to whether the petitioner, in the given facts and circumstances, is entitled to get benefit of anticipatory bail or not ? Section 37 of the Act reads as under :

“Offences to be cognizable and non-bailable – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) every offence punishable under this Act shall be cognizable;

(b) **no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless -**

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]”

(Emphasis supplied)

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8. A plain reading of the aforesaid provisions of Section 37 of the Act shows that when a person is accused of an offence punishable under Section 19 or 24 or 27-A and also for offences involving commercial quantity, he shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release, and in case a Public Prosecutor opposes the application, the Court must be satisfied that there are reasonable grounds for believing that the person is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. So far as the applicability of the limitations of Section 37 of the Act to the case in hand is concerned, reliance can be placed upon the authority cited as ***Satpal Singh vs. State of Punjab : 2018 (13) SCC 813***, wherein Hon'ble Supreme Court has not only declined the prayer of an accused for grant of anticipatory bail, who was also nominated on the basis of disclosure statement suffered by a co-accused, keeping in view the limitations of Section 37 of the Act but has also reiterated that while granting concession of bail in cases of commercial quantity, the conditions laid down in Section 37 of the Act have to be mandatorily fulfilled. More so, the very purpose of Section 37 of the Act is to curb the drug abuse and its trafficking by making it difficult for accused to secure bail and it aims to deter individuals from engaging in such activities. By imposing strict conditions for bail, this Section of the Act ensures that the enforcement of the Act is robust and effective. This provision seeks to maintain public safety and order by keeping individuals accused of serious drug offences in custody, thus, preventing them from potentially continuing their illegal activities. The present petitioner also seems to be a habitual offender, who is indulged in drugs trafficking, which is apparent from his

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antecedents. Hence, the rigors of Section 37 of the Act would certainly apply to his case for grant of bail, either anticipatory or regular one. Therefore, the argument raised by learned senior counsel for the petitioner with regard to non-applicability of Section 37 of the Act is rejected.

9. Now coming to the next question i.e. if the petitioner is entitled to get concession of anticipatory bail in the given facts and circumstances of this case? In the considered opinion of this Court, the answer to this question should be in the negative. As per Section 37 of the Act, while granting bail to an accused who is involved in a case where commercial quantity of the contraband has been recovered, this Court is required to record its satisfaction with regard to twin conditions imposed therein that the public prosecutor has been accorded opportunity to oppose the bail, either regular or anticipatory, and if the public prosecutor opposes the bail, then this Court have to record a satisfaction that there are grounds for believing that the accused is not guilty of the offence alleged and that he is not likely to commit any offence while on bail. In the present case, obviously, learned State counsel has been given an opportunity to oppose the bail and he is vehemently doing so. Hence, this Court is required to see if the petitioner is guilty of subject crime and that in case he is extended benefit of bail, he would not commit any such offence while on bail.

10. As per allegations, the petitioner is the kingpin of the subject offences of the present case. It is the petitioner, who had contacted co-accused Sandeep Singh @ Bhatti and had given him an amount of Rs. 9 Lakhs to procure heroin from a person at Amritsar. The co-accused had gone so and had procured 06 kgs. of heroin from Amritsar along with aforesaid two co-accused

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on 12.03.2024 after handing over said amount of Rs. 9 Lakhs to him. When they reached back Moga, the petitioner took 500 grams of heroin out of 06 kgs. from them and rest of the contraband was to be delivered to the petitioner on 13.03.2024 but they were apprehended by the police party leading to registration of the present FIR. The antecedents of the petitioner as well as the disclosure made by the co-accused leave no reason for this Court to believe that the petitioner is not guilty of the subject offences or no *prima facie* case is made out against him. Since he has previous history of involvement in similar offences, it can also be not stated that he will not commit any such or similar offence, if extended benefit of bail by this Court. Therefore, the claim of the petitioner for grant of benefit of anticipatory bail is hit by the rigors of Section 37(1)(b)(ii) of the Act and he does not qualify the condition prescribed therein. Hon'ble Supreme Court in ***State by the Inspector of Police vs. B. Ramu : 2024(1) Law Herald (SC) 366*** has held that in case of recovery of huge quantity of narcotic substance, the Courts should be slow in granting even regular bail to the accused, what to talk of anticipatory bail, more so when the accused is alleged to be having criminal antecedents and while dealing with an application for bail in cases involving commercial quantity of the contraband, the Court would have to mandatorily record the satisfaction in terms of rider contained in Section 37 of the Act, in which the present petitioner has failed. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It has also

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to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Therefore, in view of the discussion as made above, this Court is of the considered opinion that in order to carry out thorough investigation in the matter and burst the network of drug trafficking and also for effecting further recovery of contraband, if any, the custodial interrogation of the petitioner is must. Therefore, it is held that the petitioner is not entitled to get benefit of anticipatory bail. So far as the ratio of law as laid down in the authorities relied upon by the petitioner is concerned, the same cannot be taken into consideration at this stage while deciding an application filed under Section 438 of Cr.P.C.

11. The menace of drug addiction in the State of Punjab and surrounding areas has reached alarming proportions, posing severe social, economic, and health challenges. Once known for its agricultural prosperity, the State now struggles with rampant drug abuse, particularly among its youth. This epidemic is fueled by easy access to narcotics and a lack of awareness about the dangers of drug use. The consequences are devastating, leading to broken families, increased crime rates, and overwhelming pressure on the healthcare system. Despite Government's efforts and numerous campaigns to combat this crisis, the deep-rooted issue of drug addiction continues to undermine the region's development and stability. Addressing this problem requires a comprehensive approach, including stricter law enforcement, effective rehabilitation programs, and community-based initiatives to educate and support those affected. The bail applications involving offences under the NDPS Act must be handled with utmost strictness to effectively combat the

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rampant drug menace plaguing the State. Granting bail by taking lenient view can potentially undermine the efforts to curb drug trafficking and abuse, allowing offenders to evade justice and continue perpetrating harm in communities already deeply affected. Strict adherence to the provisions of the NDPS Act ensures that those involved in drug-related crimes face appropriate consequences, sending a strong deterrent message and bolstering law enforcement efforts. By maintaining a stringent approach towards bail, the state can more effectively disrupt drug supply chains, dismantle organized crime networks, and protect vulnerable populations from the devastating impact of substance abuse. This rigorous stance is crucial in safeguarding Punjab's future generations and fostering a safer, drug-free environment for all its residents.

12. In view of the discussion as made above, this petition is devoid of any merit. Hence, the same is dismissed.

13. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

19.07.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes