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

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CRM-M-30639-2024 (O&M)
Date of decision: 19.07.2024

Harender Pankaj ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sanpreet Sandhu, Advocate
for the petitioner.

Ms. Nidhi Garg, AAG, Haryana.

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. 263 dated 25.10.2023, registered under Section 22 of the NDPS Act, 1985 at Police Station Sadhaura, District Yamuna Nagar.
2. Brief facts of the case relevant for the disposal of the present petition are that on 25.10.2023, co-accused Rocky @ Monty was arrested by the police party and recovery of 150 *Alprazolam* 0.5 mg was effected from him. The petitioner has been nominated in this case on the basis of the disclosure statement suffered by the said co-accused, wherein he stated that he used to purchase intoxicant tablets from the petitioner. Apprehending his arrest, the petitioner had filed an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri but the same has been dismissed, vide order dated 15.06.2024.

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3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He has neither been named in the secret information nor in the FIR. Rather, he has been involved in this case on the basis of the disclosure statement made by the co-accused, which is not admissible in law against the petitioner. He is not involved in any other case. There were several discrepancies in the investigation as proper procedure as prescribed under the Act has not been followed. Custodial interrogation of the petitioner is not required as no recovery is to be effected from him. No useful purpose would be served by detaining him in custody. It is, therefore, urged that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has relied upon the authority of Hon'ble Supreme Court rendered in ***Tofan Singh vs. State of Tamil Nadu : (2021) 4 SCC 1***.

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 during the course of investigation, the involvement of the petitioner in the subject crime has been established. The petitioner used to supply intoxicant tablets to the co-accused on payment basis. During investigation, call details record of the petitioner as well as aforesaid co-accused has been procured, which shows that during the period from 01.07.2023 to 25.07.2023, they had exchanged a number of calls. It is further argued that custodial interrogation of the petitioner is must for proper investigation in the matter as well as for effecting further recovery of contraband, if any. It is, thus, argued 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.

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6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Rocky @ Monty, from whose custody, recovery of 150 intoxicant tablets weighing 20.25 grams was effected. The allegation against the petitioner is that he had supplied the recovered tablets to the co-accused on receiving a payment of Rs. 1200/- per box, which shows that he was actively involved in the business of supplying drugs/contraband. Even a perusal of the call details record shows that the petitioner was in constant touch over phone with the co-accused, which also establishes his involvement in the subject crime. So far as the ratio of law as laid down by Hon'ble Supreme Court in *Tofan Singh*'s case (supra) is concerned, the same is not disputed but it stands clarified by Hon'ble Supreme Court in *State of Haryana vs. Samarth Kumar : 2022(3) RCR (Criminal) 991*, wherein it has been held that the advantage of decision of *Tofan Singh*'s case (supra) can be taken at the time of final hearing after conclusion of trial and at the time of regular bail. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. 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 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

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discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather his custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

7. 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/No

Whether reportable

Yes/No