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

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CRM-M-30761-2024 (O&M)
Date of decision: 07.08.2024

Pritpal Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. L. S. Sekhon, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, 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. 29 dated 26.01.2024, registered under Sections 21, 22, 25 and 29 of the NDPS Act, 1985 at Police Station City Barnala, District Barnala.
2. Brief facts of the case relevant for the disposal of the present petition are that on 26.01.2024, co-accused Sunny Singh, who is real brother of the present petitioner, was apprehended by police and recovery of 500 vials of *Wincerex* Cough Syrup of 100 ml each and 700 intoxicant tablets was effected from him. The petitioner has been nominated in this case on the basis of the disclosure statement suffered by aforesaid co-accused, wherein he stated that the recovered contraband was supplied to him by his brother Pritpal Singh @ Kali, i.e. the present petitioner, for selling the same to co-accused Manjit Kaur @ Mamna, Happy @ Pala, Makhan Singh and Raju. Apprehending his arrest, the petitioner had moved an application for grant of

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anticipatory bail before the Court of learned Judge, Special Court, Barnala but the same had been dismissed, vide order dated 29.04.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner was not found at the spot and has been involved in this case on the basis of the disclosure statement made by the aforesaid co-accused, which is not admissible in evidence against the petitioner. No independent witness was joined by the Investigating Officer during the course of investigation. Co-accused Manjit Kaur has been granted concession of anticipatory bail by this Court, vide order dated 08.07.2024 passed in **CRM-M-19501-2024**. Hence, on the ground of parity too, the petitioner is entitled to get the benefit of anticipatory bail. The petitioner is ready to join the investigation. No useful purpose would be served by detaining him in custody. Therefore, it is 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**. Learned counsel for the petitioner has also relied upon the order dated 02.04.2024, passed by Hon'ble Supreme Court in **Arvinder Singh vs. State of Punjab**, SLP (Crl.) No. 15922/2023 to submit that an accused, who was also involved in the said case on the basis of the disclosure statement suffered by a co-accused, had been granted concession of anticipatory bail, despite the fact that he was involved in three more cases under the NDPS Act.

4. *Per contra*, learned State counsel has argued that there are serious and specific allegations against the petitioner. Co-accused Sunny

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Singh, who is his real brother, had disclosed that the recovered contraband was supplied to him by the petitioner for the purpose of selling the same to the aforesaid co-accused. The petitioner is the main supplier of the drugs to the aforesaid co-accused. Apart from the present case, the petitioner is involved in three more cases under the NDPS Act, out of which, he stands convicted in one case and two cases are still pending against him. During the course of investigation, the complicity of the petitioner in the subject crime has been established. The quantity of the contraband recovered from the co-accused falls under the commercial quantity. The rigors of Section 37 of the Act would be attracted against the petitioner. 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.

6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Sunny Singh, who is his real brother. There are allegations against the petitioner that he had supplied the recovered contraband to co-accused Sunny Singh for supplying the same to aforesaid co-accused Manjit Kaur etc. The quantity of the contraband recovered from the co-accused is huge and obviously falls within the commercial quantity. Though, the petitioner was not found at the spot and was nominated in this case on the basis of the disclosure made by the co-accused, but during investigation, his complicity in the subject crime has been established. He is shown to be involved in three more FIRs under the

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NDPS Act, out of which, in one case he stands convicted and in two case, the trial is going on. During investigation, it has also come on record that the car used in the subject crime is registered in the name of Kulbir Singh, who is also a brother of the present petitioner. Co-accused Sunny Singh has specifically named the petitioner as supplier of the contraband/drugs and since he is real brother of the petitioner, it cannot be stated at this stage that he had falsely implicated him in this case. Rather, this all goes to show that the petitioner including his brothers is involved in supplying the contraband to others. The petitioner has claimed parity with co-accused Manjit Kaur, who has been granted concession of anticipatory bail by this Court. However, the case of the petitioner is not on the same footing with that of said co-accused as *prima facie* there was no direct connection between co-accused Sunny Singh and Manjit Kaur.

7. Learned counsel for the petitioner has relied upon ***Tofan Singh***'s case (supra) to submit that the disclosure statement suffered by the co-accused is not admissible against the petitioner. The ratio of law laid down by Hon'ble Supreme Court in this judgment is not disputed but the same 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 in regular bail application or at the time of final hearing after conclusion of trial and not while seeking concession of pre-arrest bail. So far as the order dated 02.04.2024, passed by Hon'ble Supreme Court in ***Arvinder Singh***'s case (supra), granting concession of anticipatory bail to the accused, is concerned, the same is distinguishable on the facts of the case as in that particular case,

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no link was found between the accused and recovered contraband, except the disclosure statement made by the co-accused. However, in the present case, a direct link between the petitioner and recovered contraband has been established during investigation as the co-accused, on whose disclosure he has been arrayed as an accused, is his real brother and it cannot be believed, at this stage, that he would falsely implicate his own brother. More so, at the cost of repetition, it can further be stated that the car, allegedly used in the commission of offence, has been found to be registered in the name of brother of the petitioner, which also prima facie establishes the complicity of the petitioner in the aforementioned offences.

8. 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 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

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interrogation is required for thorough investigation in the matter by the police and for effecting recovery of contraband, if any. 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.

07.08.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>