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

CRM-M No.31854 of 2024

Date of Decision: 18.07.2024

Amit Kumar

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Deepak K. Bartia, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.261, dated 12.06.2024 (Annexure P-1), under Sections 22(c)-61-85 of NDPS Act, registered at Police Station Yamuna Nagar Sadar, District Yamuna Nagar, qua the petitioner wherein section 29 of NDPS Act was added later on.

2. Succinctly the facts of the case are that the police party received a secret information that Nanak Singh, who was an Auto Rikshaw driver, was involved in selling the intoxicating capsules and he was coming from Khajuri Mode Canal Bridge in his Auto Rikshaw No.HR45C-2741 and in case of nakabandi, he could be arrested along with the contraband on the spot. On finding the information to be reliable, the *ruqa* was sent to the SHO, Police Station Sadar Yamuna Nagar. Resultantly, the barricades were



laid and as per the secret information received, the auto rikshaw was stopped. The driver of the same was apprehended by the police party, who, on asking, disclosed his name to be Nanak Singh son of Karam Singh. He was served with the notice under Section 50 of the NDPS Act and search of the auto rikshaw was carried out. On conducting the search, the capsules totaling 360240600 were recovered from the same. From his personal search, 600 capsules weighing 322.8 grams having Paracetamol Dicyclomine Hydrochloride Tramadol Hydrochloride Capsules (Spasmo NOF-NF) and Acetaminophen Tramadol HCL Dicyclomine HCl Capsules (Spasmed) were recovered from his conscious possession. Nanak Singh failed to produce any license regarding the possession of the same and thus, the FIR was registered and he was arrested. The investigation commenced. During the investigation, the disclosure was made by the co-accused having purchased the capsules from Sukhwinder Singh @ Pinka as supplier, who disclosed about the petitioner, namely, Amit Kumar @ Sonu as the main source of supplier of the contraband and thus, the petitioner was arrayed as an accused in this case. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri praying for the grant of anticipatory bail. However after hearing both the sides, the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri declined the same vide his order dated 28.06.2024. Hence the petitioner is before this Court by way of filing the present petition for the grant of bail.

3. Learned counsel for the petitioner has vehemently contended that neither the petitioner has been named in the FIR nor any recovery has been made from him. He submits that the petitioner has been arrayed as an



accused in the present FIR on the basis of the disclosure statement made by the co-accused which is not an admissible evidence. He has also submitted that the petitioner is suffering from Hernia and he is medically not fit. To buttress his arguments, he relied upon the judgment passed by this Court in ***“Mewa Singh vs. State of Punjab”***, CRM-M No.12051 of 2020. He thus submits that in the facts and circumstances of the case, the petitioner deserves to be granted anticipatory bail.

4. However learned counsel for the State has opposed the submissions made by learned counsel for the petitioner.

5. Heard.

6. On hearing learned counsel for the parties and perusing the record, it is deciphered from the facts and circumstances of the case that the contraband recovered from Nanak Singh, regarding whom the secret information was received, was found to be a commercial quantity. After registration of the FIR, the investigation commenced and on the interrogation of co-accused, Sukhwinder Singh, he disclosed about the petitioner, namely, Amit Kumar that he was the main supplier of the contraband. Accordingly, Section 29 of the NDPS Act was incorporated. The precise contentions raised by learned counsel for the petitioner is to the effect that the petitioner has been arrayed as an accused on the basis of disclosure statement of the co-accused and secondly, the medical condition of the petitioner is not well.

7. The Court has perused the medical record produced by the petitioner and the respondent-State was directed to verify the same.



8. Learned counsel for the State has apprised the Court that the petitioner was medically fit and the contentions raised by learned counsel for the petitioner are thus not substantiated. The other argument raised by learned counsel for the petitioner that the petitioner has been arrayed as an accused on the basis of disclosure statement is also without any force. As per record of the case, it is found that the petitioner is involved in six other cases. The quantity recovered from the co-accused is commercial in nature and thus, the provisions of Section 37 of NDPS Act are attracted.
9. The Hon'ble Supreme Court in “The State of Haryana vs. Samarth Kumar”, 2022 Livelaw (SC) 622 has held that in the cases like the present one, the accused in the NDPS Act can agitate such arguments at the time of trial. However for consideration of the anticipatory bail, the arguments raised are irrelevant.
10. There is no quarrel with the proposition of law held in the authority cited by learned counsel for the petitioner but the same is distinguishable on the facts of the present case.
11. Thus, this Court does not find any merit in the present petition and the same being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

18.07.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No