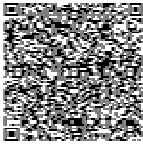


2024:PHHC:146078



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

207

CRM-M-39366-2024 (O&M)
Date of decision: 08.11.2024

Lakhwinder Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Tushar Gautam, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 438 of Cr.P.C., is for grant of anticipatory bail to the petitioner in FIR No. 52 dated 24.06.2024, registered under Section 15 of the NDPS Act, 1985 at Police Station Jodhan, District Ludhiana.
2. Brief facts of the case relevant for the disposal of the present petition are that on receiving a secret information to the effect that Avtar Singh @ Resham had kept a huge quantity of poppy husk in his house and he and one Baljit Singh @ Meeta are the owners of the same, a raid was conducted by the police party head by Inspector Hira Singh on the house of Avtar Singh @ Resham and recovery of 09 quintals of poppy husk was effected from his house. Co-accused Avtar Singh @ Resham was formally arrested at the spot. During the course of investigation, he suffered disclosure statement to the effect that the petitioner and aforesaid Baljit Singh @ Meeta were the owners of the recovered contraband. On the basis

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of this disclosure statement, the petitioner has been nominated in this case. Apprehending his arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Judge, Special Court, Ludhiana but the same had been dismissed, vide order dated 24.07.2024

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner has not been named in the FIR nor any allegation has been levelled against the petitioner. He has been involved in this case on the basis of the disclosure statement made by the co-accused, which is not admissible in evidence. The petitioner is ready to join the investigation. No useful purpose would be served by detaining him into 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***. He has also relied upon certain other orders, passed by the co-ordinate Benches of this Court, wherein accused have been granted concession of anticipatory bail in similar offences.

4. *Per contra*, learned State counsel, in terms of status report, has vehemently opposed the prayer made by the petitioner. It is submitted that although the petitioner has been nominated in this case on the basis of the disclosure statement suffered by the co-accused but during the course of investigation, his complicity has duly been established. Since a huge recovery of the contraband has been recovered in this case, which falls under the commercial quantity, the rigors of Section 37 of the NDPS Act would be attracted in this case. The criminal antecedents of the petitioner are not clean as he is already involved in two other cases under the NDPS Act. Custodial

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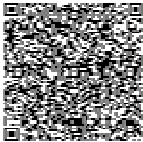


interrogation of the petitioner is must for proper investigation in the matter as well as for effecting further recovery of contraband, if any. It is, thus, argued that the petition is liable to be dismissed.

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 aforesaid co-accused, from whose house, a huge quantity of poppy husk i.e. 9 quintals was recovered. The quantity of the contraband obviously falls under the commercial quantity. Hence, the rigors of Section 37 of the NDPS Act would certainly be attracted in this case. The petitioner is shown to be involved in two more cases under the NDPS Act, which shows that he is a habitual offender. 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 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 bail orders as relied upon by the petitioner are concerned, it is well settled proposition of law that the orders of bail are not necessarily orders of any precedent value. Reliance in this regard can be placed upon the authority cited as ***Gajanand Agarwal vs. State of Orrisa and others : 2006(4) R.C.R.(Criminal) 311***. 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

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his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 482 of BNSS (*which is pari material with 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 482 of BNSS. 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 interrogation is required for thorough investigation in the matter by the police as well as for effecting further 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.

08.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No