



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

CRM-M-41944-2024

Date of Decision : 11.09.2024

NAWAB AHMAD

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Davneet Sangwan, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, prayer is made for grant of 'anticipatory bail' to the present petition, in case FIR no.713, dated 24.07.2024, under Sections 22-C/29/61/85 of the NDPS Act, 1985, (Section 29 of the NDPS Act added later on), registered at Police Station City Yamunanagar, District Yamunanagar.

2. In pursuance of the last order dated dated 29.08.2024, today, learned State counsel has filed a reply, dated 07.09.2024, by way of an affidavit of Sh. Rajesh Kumar, DSP, Yamunanagar-II, alongwith Annexures R-1 and R-2, which is taken on record, with a copy thereof supplied to learned counsel for the petitioner.

BRIEF FACTS OF THE CASE

3. In the instant matter, the prosecution agency was set into motion on a secret information received, and in pursuance thereof, the police official concerned, arrested the co-accused Taleem Salmani alias Monu on 24.07.2024, with the allegation of carrying narcotic substance, i.e. 1180 capsules containing Tramadol HCL, Paracetamol and Dicyclomine HCL, (700 capsules Marka Parvodon Spas) and Dicyclomine Hydrochloride, Tramadol Hydrochloride and Acetamikenophen Capsules (480 capsules Marka Spasmax-B), weighing 644.8 grams, which falls within the ambit of commercial quantity.

4. During the investigation the main accused-Tasleem Salmani alias Monu suffered a disclosure statement (Annexure R-2), wherein he disclosed that he purchased the aforesaid intoxicant tablets from the present petitioner. He also disclosed that he used to purchase intoxicant tablets from the present petitioner, and thereafter, he used to sell the same in different areas and earns good money out of that. The relevant extract of the disclosure statement reads as under:-

“.....On account of labour work, I was facing difficulty to run my house and was also facing difficulty to procure intoxicant. About 5-6 months ago, I went to Mirdhan Mohalla, Sarsawa (U.P.) for personal work where Dr. Nawab S/o Said resident of Harijanan Mohalla, P.S. Sarsawa, District Saharanpur (U.P.) who was running a clinic on the turn of street in Mirdhan Mohalla. During conversation, he told that I am running clinic here and I had told him that I consumed intoxicating capsules and these intoxicating capsules are available with you who had told me that I cannot provide these intoxicating capsules to you at my shop. I can meet you outside and would provide capsules. I had taken mobile no. 85320-64439 of Dr. Nawab and had given my mobile no. 95184-95977 to Dr. Nawab and thereafter, whenever I had requirement of intoxicant capsules. I used to call Dr. Nawab from my mobile on his mobile phone and used to purchase box of intoxicant capsules from the specified place told by him at the rate of Rs.1200/- per box and used to sell the same to the passerby employed in Yamuna Nagar factories @ Rs.200/- per stripe and I was thereby earning good

money. I had purchased intoxicants capsules from Nawab number of times from the specified place told by him at Sarsawa Road, Village Chhapra Turn. On 24-07-2024, also I had telephonic conversation with Dr. Nawab and after meeting him had purchased stripes of 1180 intoxicant capsules from Sarsawa Road, Village Chhapra Turn for a cash of Rs.12,000/-. On the evening of same day, I was standing near Traffic Park, Yamuna Nagar to sell the same to a customer along with said capsules in bag where I was A apprehended by the police along with 1180 intoxicant capsules.....”

5. Thereupon, the prosecution agency invoked the provisions of Section 29 of the NDPS Act, and the petitioner was involved in the instant FIR.

SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONER

6. Learned counsel for the petitioner, in asking for the relief of anticipatory bail submits that there is no inculpatory evidence available with the prosecution agency to connect the present petitioner with the alleged crime, and except the disclosure statement (*supra*), which is not otherwise admissible.

7. He further submits that though there was a telephonic conversation between the present petitioner and the main accused- Tasleem Salmani, however, the prosecution is not having any transcript of the said conversation. Therefore, he may be granted the relief of pre-arrest bail.

SUBMISSIONS BY LEARNED STATE COUNSEL

8. On the other hand, learned State counsel opposes the asked for relief (*supra*), to the present petitioner, and reiterated the contents of the aforesaid reply to support the prosecution case.

9. Learned State counsel, on instructions imparted to him by SI Satish Kumar, informs this Court that the co-accused Tasleem Salmani, was taken on production warrants in another FIR bearing No.254, dated

06.09.2024, wherein also, he suffered a disclosure statement, to the extent of disclosing the present petitioner as one of the persons who supplied the contraband to him, therefore, the present petitioner was involved in one other case under NDPS Act.

ANALYSIS OF THE RECORD

10. This Court has considered the submissions made by learned counsel for the petitioner as well as learned State counsel, and perused the entire case file.

11. In the instant case, during investigation, it transpires that from dated 24.05.2024 to dated 24.07.2024, there is an exchange of telephonic calls between the present petitioner and the co-accused namely Tasleem Salmani alias Monu. The said call details record, is in the possession of the investigating agency, and there is no dispute regarding this fact.

12. The antecedents of the present petitioner are not clean, as he is stated to be involved in one other criminal case, that is of a similar nature, as stated by learned State counsel.

13. Considering the totality of the abovementioned facts, that there is a sufficient evidence for the prosecution to conduct further investigation regarding the role of the present petitioner in the instant FIR, as well one another FIR lodged against the present petitioner, and further considering the fact that the recovery effected from the co-accused falls within the ambit of commercial quantity, this Court is not inclined to grant the relief of pre-arrest bail of the petitioner. For this view, this Court

finds support from the judgment passed by the Hon'ble Supreme Court in “**The State of Haryana vs Samarth Kumar,**” 2022 LiveLaw (SC) 622, wherein, the Hon'ble Supreme Court has observed as under:-

“7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.”

FINAL ORDER

14. Considering the above mentioned facts, and the law laid down by the Hon'ble Supreme Court in the case of **Samarth Kumar's** case (*supra*), the present petition is, **dismissed**, being devoid of any merits.

15. All pending application(s), if any, stand **disposed** of accordingly.

September 11, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. :	Yes/No
Whether Reportable.:	Yes/No