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

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CRM-M-44205-2024 (O&M)
Date of decision: 23.09.2024

Seema ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No. 122 dated 25.07.2024, registered under Sections 21 and 29 of the NDPS Act, 1985 at Police Station City Nawanshahr, District SBS Nagar.
2. Brief facts of the case relevant for the disposal of the present petition are that on 25.07.2024, co-accused Nirmal Dass @ Nimma was apprehended by a police and recovery of 70 grams of heroin and drug money of Rs.2,06,000/- was effected. The petitioner has been nominated in this case on the basis of the disclosure statement suffered by aforesaid co-accused, who is husband of the present petitioner, wherein he stated that it was the present petitioner, who had been arranging and handing over the contraband to him for selling the same to others. Apprehending her arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Judge, Special Court, SBS Nagar but the same had been dismissed,

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vide order dated 27.08.2024.

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 co-accused, which is not admissible in evidence against the petitioner. Even the recovery of the said contraband effected from the co-accused is of non-commercial quantity. The petitioner is ready to join the investigation. No useful purpose would be served by detaining her 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.***

4. *Per contra*, learned State counsel, in terms of the status report, has vehemently opposed the prayer of the petitioner by submitting that though the petitioner has been nominated in this case on the basis of the disclosure statement suffered by the aforesaid co-accused, however, during the course of investigation, her complicity in the subject offence has been established. Since the aforesaid co-accused is the husband of the petitioner, it cannot be believed that he would falsely implicate her in this case. The petitioner is a habitual offender as there are 06 other cases under the NDPS Act against her, out of which, in 05 cases she stood convicted and in 01 case she is facing trial. Her custodial interrogation 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.

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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 Nirmal Dass @ Nimma, from whose custody, recovery of 70 grams of heroin and drug money of Rs. 2,06,000/- was effected. A perusal of the status report shows that the petitioner has been convicted in 05 other cases under the NDPS Act and she is facing trial in 01 more case under the NDPS Act, which means that she is a habitual offender. The petitioner seems to be a drug peddler. Custodial interrogation of the petitioner is must for proper investigation in the matter and for effecting recovery of the contraband, if any. 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. 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 482 of BNSS are to be exercised in extraordinary and sparing circumstances. 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

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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 her 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.

23.09.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>