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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-45850-2024 (O&M)
Date of Decision: 04.10.2024

Resham Singh

...Petitioner

Versus

State of U.T. Chandigarh

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

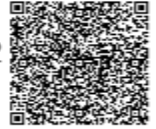
Present: Mr. Edward Augustine George, Advocate
for the petitioner.

Mr. Manish Bansal, Public Prosecutor, U.T. Chandigarh and
Mr. Rajiv Vij, Additional Public Prosecutor, U.T. Chandigarh.

HARPREET SINGH BRAR, J.(Oral)

1. This is second petition preferred by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’) seeking anticipatory bail in the case bearing FIR No.476 dated 25.12.2023 under Sections 21, 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’), registered at Police Station Sector 36, Chandigarh.

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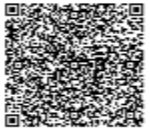
2. Succinctly, the facts, as alleged, are that on 25.12.2023, the police party, headed by SI Baljit Singh, had put up a checkpoint at the dividing road from Sector 52 to village Kajheri. Around 05:25 p.m., one person riding an Activa scooter arrived at the said location, but tried to escape, when he saw the police party ahead. On seeing, SI Baljit Singh approached him and the said person pulled out one transparent polythene pouch from the right pocket of his tracksuit and tried to throw it away. However, SI Baljit Singh caught his hand and recovered the polythene pouch. On instruction, Constable Ashok brought the Drug Detection Kit from the car and the contents of the polythene pouch were found to be positive for amphetamine, weighing 54.72 gm. Subsequently, the said person identified himself as Mohammed Imtiyaz and on his disclosure statement, one Gagan was arrested, who further made a disclosure that he bought the contraband from one Sukhpreet @ Preet and the petitioner. Sukhpreet@ Preet was arrested on 05.01.2024 and an Etios car, a Swift car, mobile phones, Rs.9,000/- and 22 gm of heroin were recovered from his flat. On the same day, Sukhpreet @ Preet made a disclosure statement, wherein he confessed that he and the petitioner were the suppliers of the said contraband.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been nominated in the FIR (*supra*) solely on the basis of the

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disclosure statement made by co-accused, wherein he portrayed him to be the kingpin of a drug syndicate. It is settled law that disclosure statement made before a police officer is not admissible. Further, no recovery has been effected from the petitioner. Learned counsel further submits that the petitioner slipped from the stairs and suffered multiple injuries including fractures of the vertebrae. The petitioner was treated at the Government Multi-speciality Hospital, Sector 16, Chandigarh and in this regard, medical record is available on record at Annexure P-6 and he was recommended bed rest for a period of six months. Learned counsel places reliance upon judgments rendered by the Hon'ble Supreme Court in *State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and another, 2022 (1) RCR (Crl.) 762, Manga Singh Vs. State of Punjab, SLP (Crl.) No.1363 of 2023* decided on 24.03.2023, *Rajinder Kumar Vs. State of Punjab, SLP (Crl.) No.5309 of 2023* decided on 01.05.2023, *Vijay Singh Vs. The State of Haryana, SLP (Crl.) No.1266 of 2023* decided on 17.05.2023, *Jagroop Singh Vs. The State of Punjab, SLP (Crl.) No.3310 of 2023* decided on 12.07.2023, *Roji @ Dimpi Vs. The State of Punjab, SLP (Crl.) No.8976 of 2023* decided on 13.09.2023, *Arvinder Singh Vs. State of Punjab, SLP (Crl.) No.15922 of 2023* decided on 02.04.2024, *Supriya Chaki Vs. The State of West Bengal, SLP (Crl.) 807 of 2020* decided on 12.01.2023, *Subodh Kumar Sagar @ Subodh Kumar Sah Vs.*



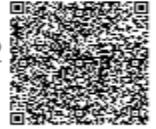
The State of Bihar, SLP (Crl.) No.12013 of 2022 decided on 15.02.2022, Kiran Jadav @ Kiran Vs. State of West Bengal, SLP (Crl.) No.1087 of 2023 decided on 20.09.2023, Akash Dhamole Vs. State of Madhya Pradesh, SLP (Crl.) No.12787 of 2023 decided on 08.12.2023 and by this Court in Satya Kaur Vs. State of Punjab, CRM-M-29880-2023, decided on 15.12.2023 and Manjit Kaur Vs. State of Punjab, CRM-M-19501-2024 decided on 08.07.2024 as well as the order 17.11.2023 passed in CRM-M-56647- 2023 titled as Yogesh Kumar Vs. State of Punjab and order dated 02.05.2024 passed in CRM-M-21872-2024 titled as Seema Kaur Vs. State of Punjab.

4. Learned State counsel places on record the affidavit filed by Mr. Ketan Bansal, IPS, Superintendent of Police, Crime Intelligence and Head Quarters, U.T. Chandigarh indicating compliance of the directions issued by this Court in *Darshan Singh Vs. State of Punjab* in CRM-M-55907-2023 decided on 21.12.2023.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

6. The affidavit filed by the Superintendent of Police is taken on record and a perusal of the same indicates that warrants of arrest dated 06.09.2024 could not be executed against the petitioner, as he was concealing himself from the police. In compliance with the directions

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issued by this Court in ***Darshan Singh***'s case (*supra*), proclamation has been issued against the petitioner under Section 82 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.)/Section 84(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 vide order dated 03.10.2024 passed by learned Judicial Magistrate 1st Class, Chandigarh.

7. Further, this is the second attempt made by the petitioner to secure an anticipatory bail in the case stemming from FIR (*supra*). The first petition was dismissed by this Court vide order dated 22.03.2024 by holding that custodial interrogation was necessary to unearth the *modus operandi* of the drug racket headed by the petitioner and the following order was passed: -

“The present petition has been filed under Section 438 Cr.P.C. seeking anticipatory bail in case bearing FIR No.476 dated 25.12.2023 (Annexure P-1) under Sections 21/22/29 of NDPS Act, 1985 registered at Police Station 36, Chandigarh.

Learned counsel for the petitioner inter alia contends that admittedly, the petitioner was not apprehended at the spot and the alleged contraband was recovered from the co-accused. The petitioner has been involved in this case only on the basis of disclosure statement made by coaccused- Sukhpreet Singh while in police custody which has no evidentiary value in the eyes of law.

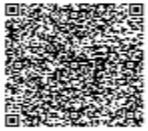
Per contra, the learned State counsel opposes the grant of anticipatory bail to the petitioner on the ground that during the investigation, it is revealed that the petitioner is a

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kingpin of a drug syndicate being operated from Canada and the petitioner has his supply links in Kapuwara, J&K and the co-accused, Sukhpreet Singh, has accompanied the petitioner to Jammu & Kashmir, whereas, co-accused, Gagan received three deliveries of 4 kg heroin each from Srinagar and handed it over to the petitioner and one Pardeep in Chandigarh. He visited Kashmir from 09.10.2023 to 13.10.2023 and 28.10.2023 to 29.10.2023 and also on 24.11.2023. The petitioner used to pay Rs.2 lakh for receiving one consignment of delivery and on the direction of the petitioner, the amount was deposited in two bank accounts of the residents of Jammu & Kashmir and the petitioner has purchased properties from the earning generated by selling the drugs, the details of which, have already been obtained. He further submits that the petitioner is involved in two more cases in Punjab and in one case, he is wanted in Gujarat under N.D.P.S. Act.

Having heard learned counsel for the parties, this Court finds no merit in the arguments advanced by learned counsel for the petitioner and keeping in view the serious allegation and the fact that the investigation is still at the initial stage, the custodial interrogation of the petitioner is essential to unearth the supply chain of the drug racket and also the modus operandi and the manner in which the delivery of the contraband is made. In view of the ratio of law laid down by the Hon'ble Supreme Court in 'State by the Inspector of Police Vs. B. Ramu' Special Leave to Appeal (Crl.) No(s).8137/2022 decided on 21.10.2022, the present petition is dismissed."

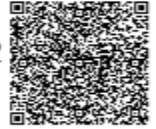


8. The present petition has been moved in spite of the fact that no change in the circumstances has occurred since the dismissal of the first petition for anticipatory bail. Pertinently, a three Judge Bench of the Hon’ble Supreme Court in ***G.R. Ananda Babu Vs. State of Tamil Nadu and another, 2021(1) RCR (Criminal) 843*** has held as follows:

“7. As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.”

9. Reliance can also be placed upon the judgment rendered by the Hon’ble Supreme Court in ***Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav, 2005(1) RCR (Criminal) 703***, wherein it was held that ordinarily, the arguments made previously cannot be re-agitated, as it would lead to loss of confidence in the process of administration of justice as well as open gates for forum hunting.

10. Further, a Full Bench of Calcutta High Court in ***Maya Rani Guin and etc. Vs. State of West Bengal, 2003(1) RCR (Criminal) 774*** has categorically held that entertaining second application for anticipatory bail would amount to review or re-consideration of the earlier order passed by a Court with competent jurisdiction, while the accusation remains

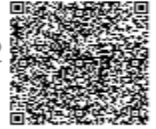


unchanged. Since the allegations remain the same, in any event, the same reasons for apprehension of arrest cannot be reconsidered. Ergo, the second application for anticipatory bail, even if new circumstances arises after rejection or disposal of earlier application, the second application would not be maintainable. Speaking through Justice M.H.S. Ansari, the following was observed:

*“39. If in exercise of its power under Section 438 of Criminal Procedure Code the High Court or the Court of Session fixes duration as a condition of bail, the accused is required to seek regular bail under Section 437 of the Code and/or under Section 439 of the Code within the said duration. If regular bail is refused, the further remedy available to the aggrieved accused is for moving the higher Forum for regular bail. It is not and cannot be disputed that successive bail applications are permissible. **The only condition being that unless there is change in the circumstances, the second application would not be maintainable on the ground that it would be deemed to be seeking review of the Court's earlier judgment which is not permissible under Criminal Law.** The irresistible conclusion, therefore in the light of the observation in K.L. Verma's case (1997 Cal Cri LR (SC) 88) ("..... move the higher Court"), is that a regular bail application before higher Court is the only remedy. The bar of review by the same Court of its earlier judgment will not be attracted though circumstances remaining the same.”*

11. In a similar matter, a Full Bench of the Rajasthan High Court in ***Ganesh Raj Vs. State of Rajasthan and others, 2005(3) RCR (Criminal) 30***, speaking through Justice Shiv Kumar Sharma, made the following observations:

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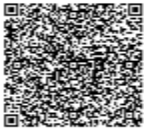


"We hold that second or subsequent bail application under Section 438 Cr.P.C. can be filed if there is a change in the fact situation or in law which requires the earlier view being interfered with or where the earlier finding has become obsolete. This is the limited area in which an accused who has been denied bail earlier, can move a subsequent application. Second or subsequent anticipatory bail application shall not be entertained on the ground of new circumstances, further developments, different considerations, some more details, new documents or illness of the accused. Under no circumstances the second or successive anticipatory bail application shall be entertained by the Section Judge/Additional Sessions Judge."

12. Reliance is in this regard can also be placed on the judgment passed by this Court in ***Rashpal Vs. State of Punjab*** in ***CRM-M-56246 of 2023*** decided on 09.11.2023, wherein it was held that the second petition for the relief under Section 482 of BNSS (earlier Section 438 Cr.P.C.) is not maintainable, if no evident change in circumstances is indicated since dismissal of the first petition for the same relief.

13. In view of the settled law, once the relief of anticipatory bail is denied to the petitioner in his first attempt before this Court and there is no change in the circumstances, as such, the second petition for the same relief under Section 482 of BNSS (earlier Section 438 Cr.P.C.) cannot be entertained merely by narrating the same facts to this Court with a new twist or by making fresh arguments by introducing new developments or material. Thus, the present petition being a second application under Section 482 of BNSS (earlier Section 438 Cr.P.C.) is not maintainable.

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Moreover, the factual background of the matter at hand does not reflect any relevant change that would merit interference by this Court.

- 14. Accordingly, the present petition is dismissed.
- 15. All the pending miscellaneous application(s), if any, shall stand disposed of.

04.10.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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