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

**CRM-M No.47856 of 2024
Date of Decision: 30.09.2024**

Kuldeep Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Suresh Kumar Arya, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 438 Cr.P.C. praying for the grant of anticipatory bail to the petitioner in case FIR No.70, dated 21.11.2023, under Section 15 of NDPS Act, 1985 and Section 29 of NDPS Act, 1985 added later on, registered at Police Station Thulliwal, District Barnala (Punjab). Further prayer has been made for staying the arrest of the petitioner during the pendency of the present petition.

2. As per the facts of the case that on 21.11.2023, when the police party was on patrolling, they received a secret information that Satgur Singh son of Baldev Singh was indulged in selling Poppy Husk and he was to bring the same from outside in his Balero Pink Vehicle bearing



PB-11DA-7168. In case of barricade, he could be arrested along with the contraband. Finding the secret information to be reliable, the barricading was laid and the disclosed vehicle was stopped by the police party. The vehicle was searched and 110 Kg of Poppy Husk was recovered from the same. During the interrogation, Satgur Singh disclosed about the complicity of one Sinderpal Singh and Kuldeep Singh i.e. the petitioner. Thus, the petitioner was also arrayed as an accused in the present case. Hence apprehending his arrest, the petitioner approached the Court of learned Judge, Special Court Barnala praying for the grant of anticipatory bail. However on hearing both the sides, the learned Judge, Special Court, Barnala finding no merit, dismissed the same vide his order dated 06.06.2024. Hence being aggrieved the petitioner is before this Court by way of filing the present petition for the grant of anticipatory bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He has submitted that the present FIR has been lodged on the basis of secret information received by the police, however the secret information was regarding the co-accused, namely, Satgur Singh, from whom the alleged recovery was made. He has submitted that name of the petitioner surfaced in the present FIR on the basis of disclosure statement made by co-accused, Satgur Singh, which is not an admissible evidence. He has relied upon the judgments passed by Hon'ble the Supreme Court in "***State of Haryana vs. Samarth Kumar***", 2022(3) RCR (Criminal) 991; "***Vijay Singh vs. State of Haryana***", SLP(Crl.) No.1266/2023 decided on



17.05.2023 and this Court has granted anticipatory bail in **CRM-M-35035-2023** titled as “*Gurpinder Singh vs. State of Punjab*” and thus submitted that the petitioner deserves to be granted anticipatory bail.

4. Notice of motion.

5. On asking of the Court, Mr. Tarun Aggarwal, Sr. DAG, Punjab appears and accepts notice on behalf of the respondent-State. He however has opposed the submissions made by learned counsel for the petitioner. He has submitted that the quantity recovered from the co-accused is 110 of Poppy Husk, which as per the investigation conducted, was brought by all the accused in conspiracy with each other. He has thus submitted that the petition being devoid of any merit deserves to be dismissed.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner is not named in the FIR, however the quantity of the contraband recovered from the co-accused is 110 Kg of Poppy Husk, which is a commercial quantity. In the investigation conducted so far, it has been revealed that co-accused, Satgur Singh has disclosed that he along with Sinderpal Singh and Kuldeep Singh i.e. the petitioner had brought this heavy commercial quantity from Rajasthan.

8. The judgments relied upon by learned counsel for the petitioner are distinguishable in the facts and circumstances of the present case. The case relied upon by the petitioner pertains to the contraband



weighing 1.7 Kg of Poppy Husk whereas in the present case, the recovered contraband is 110 kg of Poppy Husk which is a commercial quantity.

9. For the consideration of anticipatory bail, the statutory parameters are given under Section 482(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

- (1) Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
- (2) When the High Court or the Court of Sessions makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-*
- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;*
 - (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;*
 - (iii) a condition that the person shall not leave India without the previous permission of the Court;*
 - (iv) such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that Section.*



10. As per the law settled by the Hon'ble Supreme Court, in ***Gurbaksh Singh Sibbia Vs. State of Punjab***, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

“31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are



some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

11. The Hon'ble Supreme Court in ***State Vs. Anil Sharma, (1997) 7SCC 187***, held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by



all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

12. Hon'ble the Supreme Court in **Samarth Kumar's case** (*supra*) has held that in the cases like the present one, the accused may take advantage of facts like no recovery was effected from him and that he was implicated on the basis of disclosure statement made by the main accused, at the time of arguing regular bail application or at the time of final hearing after conclusion of trial.

13. Weighing the facts of the case on the anvil of the law settled, it is apparent that the complicity of the petitioner has been prima facie found. The investigation is at its threshold. The allegations made during the investigation are found to be serious. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.

14. In view of the overall facts and circumstances of the case, the petitioner do not qualify for the grant of anticipatory bail and the same is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

30.09.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No