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

CRM-M No.49530 of 2024

Date of Decision: 15.10.2024

Nasib Khan @ Nasib Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present: Mr. Gurpal Singh Sandhu, Advocate  
for the petitioner.

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**RAJESH BHARDWAJ, J.**

1. Present petition has been filed under Section 482 of BNSS, 2023 praying for the grant of anticipatory bail to the petitioner in case FIR No.0007, dated 12.01.2024, under Section 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 22-B/61/85, 27/29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (added later on) and Section 21(c) was converted into 22(b), registered at Police Station Sadar Sri Muktsar Sahib, District Sri Muktsar Sahib (Annexure P-1) and for staying the arrest of the petitioner during the pendency of the present petition.

2. As per the case of the prosecution, the police party while on patrolling on 12.01.2024 saw a person, who was wearing black colour



lower and black jacket coming from the side of Kotli Dewan. However on seeing the police, he got perplexed and turned back. On suspicion, he was stopped by the police. On asking, he disclosed his name as Barjesh Kumar @ Gauri. The Inspector suspected him to be carrying some intoxicant substance and thus, they give offer for his search. On conducting the search of black coloured polythene bag recovered from his right pocket, 60 strips of intoxicating tablets, each containing 10 tablets i.e. in all 600 tablets of Alprozolam were recovered from him. He failed to produce any licence regarding the possession of the same. Hence the FIR was registered against him and he was arrested on the spot. On registration of the FIR, the investigation commenced. The samples taken were sent to the FSL. During the investigation, name of the petitioner, Nasib Khan @ Nasib Kumar also surfaced and hence he was also arrayed as an accused in the present case. Apprehending his arrest, the petitioner approached the Court of learned Judge, Special Court, Sri Muktsar Sahib praying for the grant of anticipatory bail. However after hearing both the sides, the learned Judge, Special Court, Sri Muktsar Sahib declined the same vide his order dated 18.09.2024. Hence 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 neither the petitioner is named in the FIR nor there is any recovery made from him. He has submitted that the petitioner has been



arrayed as an accused on the basis of disclosure statement made by the co-accused, namely, Barjesh Kumar @ Gauri, which is not an admissible evidence. He has submitted that the recovery of 600 tablets of Alprozolam has been effected from the co-accused and there is no prima facie case made out against the petitioner and thus, the petitioner deserves to be granted anticipatory bail. He has relied upon the judgment passed by Hon'ble the Supreme Court in "*Toofan Singh vs. State of Tamil Nadu*", 2021 (4) SCC 1.

4. *Per contra*, learned counsel for the State has opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner is a habitual offender. He has submitted that the recovery effected from the co-accused is heavy and the petitioner is involved in 18 other cases. He has thus submitted that no case for the grant of anticipatory bail is made out and the present petition being devoid of any merit deserves to be dismissed.

5. Heard.

6. On hearing learned counsel for the parties and perusing the record, it is deciphered from the record that 600 tablets of Alprazolam were recovered from the co-accused, Barjesh Kumar @ Gauri. During the investigation, Barjesh Kumar @ Gauri made the disclosure statement about the complicity of the petitioner. As per the learned State counsel, the petitioner is a habitual offender as he is involved in 18 other cases. The quantity recovered from the co-accused is commercial in nature and thus, the provisions of Section 37 of NDPS Act are attracted.



7. The Hon'ble Supreme Court in “*The State of Haryana vs. Samarth Kumar*”, 2022 (3) RCR (Criminal) 993 has held that advantage of decision reported in “*Toofan Singh vs. State of Tamil Nadu*”, 2021 (4) SCC 1 may be taken perhaps at the time of arguing regular bail application or at time of final hearing after conclusion of trial.

8. There is no quarrel with the proposition of law held in the authorities cited by learned counsel for the petitioner but the same are distinguishable on the facts of the present case.

9. Thus, this Court does not find any merit in the present petition and the same being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)  
JUDGE

15.10.2024  
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Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No