

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207

CRM-M-54240-2023
Date of Decision : April 16, 2024

SUKHDEV -PETITIONER

V/S

STATE OF PUNJAB -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Munish Gulati, Advocate
for the petitioner.

Mr. Raghav Garg, A.A.G, Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as filed under Section 438 of the Cr.P.C., a prayer is made for grant of anticipatory bail to the petitioner, in case FIR No.158 dated 16.9.2023, under Sections 21/22/29 of the N.D.P.S. Act, 1985, registered at Police Station Makhu, District Ferozepur.
2. On 08.01.2024, this Court had passed the hereinafter extracted order:-

“Through the instant petition filed under Section 438 Cr.P.C., prayer is made for grant of anticipatory bail to the petitioner in case FIR No.158 dated 16.9.2023 under Sections 21/22/29 of NDPS Act, 1985, registered at Police Station Mukhu, District Ferozepur.

The allegation against the petitioner as unfolds from the FIR is that there is recovery of 625 grams intoxicant powder and 60 grams Heroin from the other two co-accused of the present petitioner, who were arrested on the spot, whereas, the present petitioner managed to escape from the spot.

A perusal of the FIR clearly depicts that during raid, two co-accused, namely, Lovepreet Singh and Ramandeep were arrested from the spot, who disclosed that the person, who succeeded in running away from the spot was one Sukhdev Singh, the present petitioner and one Jatinder @ Gatti and Kewal. It is revealed from the report that total quantity of intoxicant powder was 625 grams, however, the exact nature of the contraband is yet not known because the FSL report is still awaited.

At this stage, the learned State counsel has placed on record a short reply by way of affidavit of Gurdeep Singh, PPS, Deputy Superintendent of Police, Zira, District Ferozepur. The same is taken on record.

A perusal of the short reply reveals that the FSL report is still awaited.

The learned State counsel is directed to expedite the examination of the contraband from the FSL and file the report of the FSL positively on or before the next date of hearing.

Adjourned to 7.3.2024.

In the meanwhile, in the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal and surety bonds to the satisfaction of the Arresting/Investigating Officer. The petitioner shall, however, join the investigation as and when called for and shall also abide by the conditions specified under Section 438(2) of the Cr.P.C.”

3. Today, the learned counsel for the petitioner has, by placing reliance upon an order dated 17.11.2023, as drawn by a Co-ordinate Bench of this Court upon CRM-M-57923-2023, whereby, petitioner's co-accused Jatinder @ Gatti has been granted the relief of anticipatory bail, argued that since the petitioner is on a co-equal pedestal as his co-accused (supra), therefore, he also deserves an alike treatment. He has further argued that except the disclosure statement of co-accused, the investigating agency is not seized of any inculpatory material against the

petitioner.

4. *Per contra*, the learned State counsel has vehemently opposed the arguments made by the learned counsel for the petitioner, on the ground that, since FSL report has now been received, wherein, the intoxicant powder, as recovered from petitioner's co-accused, is reflected to be "Tramadol Hydrochloride", therefore, the petitioner does not deserve any relief. A copy of the FSL report, as supplied by the learned State counsel, is taken on record as Annexure A.

5. This Court has heard the arguments made by the learned counsels appearing for the parties and perused the entire record.

6. What emerges from the record, is that, 625 grams intoxicant powder and 60 grams heroin was recovered from petitioner's co-accused. Though the recovered heroin falls within the category of "non commercial quantity", however, the intoxicant powder, which is now reflected as "Tramadol Hydrochloride" in the FSL Report (Annexure A), falls within the domain of "commercial quantity".

7. It is undisputed that, at the time of granting anticipatory bail to the petitioner's co-accused (*supra*), the F.S.L. Report was not received and the contents of the recovered intoxicant powder were yet to be ascertained, therefore, he was granted the said relief. However, now the F.S.L. report has been received, wherein, the recovered intoxicant powder is revealed to be "Tramadol Hydrochloride", therefore, the petitioner cannot claim parity with his co-accused (*supra*).

8. Now, insofar as evidentiary worth of the disclosure statement(s) of petitioner's co-accused is concerned, the same can only be

considered and ascertained at the appropriate stage of trial.

9. Therefore, this Court does not deem it a fit case to grant the extraordinary relief of anticipatory bail to the petitioner. To reach at this conclusion, this Court also garners strength from the judgment rendered by the Hon’ble Supreme Court, in case titled as “*The State of Haryana Versus Samarth Kumar*”, 2022 (3) RCR (Criminal) 991. Consequently, the asked for relief of anticipatory bail is declined to the petitioner and the petition is accordingly **dismissed**.

10. However, anything observed hereinabove shall neither be construed to have any bearing on the outcome of the trial, nor the trial Court concerned shall be influenced by any of the observations recorded herein.

April 16, 2024
devinder

(KULDEEP TIWARI)
JUDGE

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