



105

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

**CRM-M No.51769 of 2024
Date of Decision: 19.10.2024**

Kulwant Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kuldip Singh, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 praying for the grant of anticipatory bail to the petitioner in case FIR No.77, dated 16.09.2024, under Sections 22 & 29 of NDPS Act, registered at Police Station Lakho Ke Behram, District Ferozepur.
2. As per the facts of the case, on 16.09.2024 when the police party while on patrolling and checking the suspicious persons in village Sarih Wala Saida, a secret information was received to the effect that Rajinder Kumar son of Mahinderpal Singh along with his relative Kulwant Singh son of Aatma Singh (petitioner) was bringing intoxicating tablets in Swift car No.PB-05AN-4904 and if the barricading is laid, they



can be arrested along with the contraband. On completing the legal requirements, the barricading was laid. Thereafter the car as informed was stopped and the co-accused, Rajinder Kumar was apprehended by the police whereas the petitioner-accused succeeded in fleeing from the spot. On checking, 550 intoxicating tablets of Tapentadol Hydrochloride were recovered. Co-accused Rajinder Kumar failed to produce any licence for keeping these intoxicating tablets and thus, the FIR was registered and co-accused Rajinder Kumar was arrested on the spot, however the petitioner succeeded in escaping from the spot. Apprehending his arrest, the petitioner approached the Court of learned Judge, Special Court, Ferozepur praying for the grant of anticipatory bail. However on hearing both the sides, the learned Judge, Special Court Ferozepur finding no merit, dismissed the same vide his order dated 04.10.2024. 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 alleged recovery of 550 intoxicating tablets has been made from co-accused, Rajinder Kumar and not from the petitioner. He has submitted that neither the petitioner was present at the spot nor there was any allegation made against him. He has submitted that though the petitioner is the owner of the car from which the alleged contraband has been recovered, however his car was borrowed by co-accused, namely, Rajinder Kumar on the pretext of attending some function. He thus



submits that the petitioner has been implicated in this case being the owner of the car. He has submitted that from the facts and circumstances, it is apparent that no prima facie case is made out against the petitioner and thus, he 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 has opposed the submissions made by learned counsel for the petitioner. He has submitted that the secret information was received against the petitioner and co-accused Rajinder Kumar. He has submitted that 550 tablets of Tapentadol Hydrochloride were recovered from the car. He has further submitted that co-accused, Rajinder Kumar was apprehended but the petitioner was succeeded in fleeing from the spot. He has thus submitted that no case for the grant of anticipatory bail is made out, and thus the same be declined.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that FIR in the present case has been registered on the basis of secret information received. As per the record, secret information was received qua the petitioner and co-accused, namely, Rajinder Kumar. The case of the prosecution is that co-accused, namely, Rajinder Kumar was arrested on the spot whereas the petitioner succeeded in fleeing from there. On search of the car, 550 intoxicating tablets were recovered from the same. The record of the case would



reveal that the petitioner is the owner of the car. The investigation of the case is at threshold.

8. For the consideration of anticipatory bail, the statutory parameters are given under Section 482(2) BNSS 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 that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-*
- (i) *the nature and gravity of the accusation;*
 - (ii) *the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognisable offence;*
 - (iii) *the possibility of the applicant to flee from justice; and*
 - (iv) *where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”*

9. 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.”

10. 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.”

11. 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. Thus, granting anticipatory bail to the petitioner at this stage would scuttle the ongoing investigation.



12. In view of the overall facts and circumstances of the case, the petitioner does 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

19.10.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No