

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-56452-2023
Reserved on: 01.12.2023.
Pronounced on: 04.01.2024.

Joga Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Luvinder Sofat,D.A.G., Punjab assisted by
SP Sarabjit Singh Bahia.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
35	05.03.2015	Sadar Jalalabad, District Fazilka	21, 24, 25, 27, 27-A, 27-B, 28, 29, 30, of Narcotics Drugs and Psychotropic Substances Act, 1985 [NDPS Act] and S. 25 of Arms Act and Section 66 of IT Act

1. The petitioner, apprehending arrest in the FIR captioned above, came up before this Court under Section 438 of the CrPC, 1973, seeking anticipatory bail.
2. The petitioner contends that pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.
3. While opposing the bail, the contention on behalf of the State is that they want custodial interrogation because the quantity of contraband involved in the case falls in the commercial category, and they have collected sufficient evidence that prima facie points towards the petitioner’s dealings with the drugs trade and the international mafia.

FACTS:

4. Facts of the case are being taken from a reply dated 17.11.2023 filed by the concerned Deputy Superintendent of Police, which reads as under: -

“[4]. That the brief background of the matter is that the present FIR No. 35 dated 05.03.2015 was initially registered against 11 accused persons

namely Harbans Singh, Subhash Chander, Gurdev Chand, Gurdev Singh, Manjit Singh UK, Sonia, Manjit Singh son of Satnam Singh, Anil Kumar @ Neelu, Shanti Singh, Nirmal Singh and Kala Singh @ Kali. In this case, following recoveries were made from the aforesaid 11 accused persons:

SR. NO.	NAME OF ACCUSED	RECOVERY EFFECTED	DATE OF PRESENTATION OF POLICE REPORT U/S 173 CrPC, 1973
1.	Harbans Singh Son of Satnam Singh	(i) 300 gms of Heroin (ii) 01 Country Made Pistol .312 bore (iii) 02 live cartridges	06.09.2015
2.	Subhash Chander Son of Shiva Ditta	260 gms of Heroin	06.09.2015
3.	Gurdev Chand Son of Nyamat Chand	260 gms of Heroin	06.09.2015
4.	Gurdev Singh Ex Chairman Son of Shiv Singh	(i) 350 gms of Heroin (ii) 24 Gold Biscuits (iii) 01 Revolver .32 Bore (iv) 25 live cartridges of .32 Bore (v) 01 Pakistani SIM Card	06.09.2015
5.	Manjit Singh U.K., Son of Buta Singh	(i) 300 gms of Heroin (ii) 01 Pakistani Mobile (iii) 01 Pakistani SIM Card	06.09.2015
6.	Sonia Wife of Anil Kumar @ Neelu	100 gms of Heroin	06.09.2015
7.	Manjit Singh Son of Satnam Singh	-	06.09.2015
8.	Shenty Singh Son of Charanjit Singh	100 gms of Heroin	06.09.2015
9.	Nirmal Singh @ Nimma Son of Iqbal Singh	100 gms of Heroin	06.09.2015
10.	Kala Singh @ Kaali Son of Madhi	-	18.10.2016
11.	Anil Kumar @ Neelu Son of Hans Raj (He was earlier absconding and was declared proclaimed offender on 01.12.2015 and was subsequently	-	31.08.2019

	arrested on 16.04.2019)		
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[5]. That the brief background this case are that in this case out of 11 accused persons, 9 have been convicted, one person is facing trial, recovery of 1.800 Kg. heroin, 1 pistol (315bore) along with 2 cartridges, 1 revolver (32 bore) along with 25 cartridges, 24 biscuits (Gold), 1 Pakistani mobile & 1 Pakistani Mobile sim. 5 persons out of 9 have been awarded 20 years sentence by the trial court, 1 person was awarded 10 years sentence, 01 person 06 years sentence & remaining 02 persons were awarded 3 years sentence while one accused has been acquitted vide judgment dated 31.10.2017.

[6] That subsequently, vide order dated 04.09.2023 of Director, Bureau of Investigation, Punjab, Chandigarh a Special Investigation Team was constituted consisting of following officials:

- a) Swapan Sharma, IPS, DIG, Jalandhar Range, Jalandhar
Chairman
- b) Mukhwinder Singh Bhullar, PPS, S.S.P Jalandhar, Rural
Member
- c) Manjit Singh, PPS, S.P. (investigation) Fazilka
Member
- d) Sarabjit Singh, PPS, S.P. Investigation, Hoshiarpur Member

The said SIT, in its investigation, has considered the evidence already available on record and has also collected fresh evidence during the course of investigation.

[7] That it is respectfully submitted that as per investigation conducted so far by SIT, it has been revealed that Charanjit Kaur (sister of accused Gurdev Singh alias Debi) had been calling present petitioner Joga Singh and PA Manish Kumar for having a talk with accused Sukhpal Singh Khaira. In this way, the petitioner was found actively active in commission of above noted offence of drug trafficking along with other co-accused Sukhpal Singh Khaira, Charanjit Kaur, Manjit Singh (Driver of Gurdev Singh accused). From the examination of CDRs obtained by the police, these accused have been found connected to each other through different phone calls. Interconnectivity Chart depicting the frequent conversations of the accused along with each other, is appended herewith as Annexure R-1 for the kind consideration of this Hon’ble Court.

Therefore, having regard to the investigation carried out so far by SIT, Gurpreet Singh @ Gopi, Kashmir Singh @ Billa, Major Singh Bajwa, Charanjit Kaur, Sukhpal Singh Khaira, present petitioner Joga Singh PSO & Manish Kumar PA were nominated in this case and sections 27-A and 27-B of NDPS Act was added in the present FIR vide DDR No. 5 dated 28.09.2023. The intimation of which was given to JMIC, Jalalabad. Out of these 07 nominated accused 03 have been arrested, 02 are evading arrest after the dismissal of their anticipatory bail from the learned trial Court where as qua 02 accused LOC have been opened.

[8] That it is respectfully submitted that after nomination of the petitioner as accused in the present FIR, a notice No. 2052-Reader-SP-Investigaton dated 28.09.2023 under Section 67 of NDPS Act was issued by the SIT to the present petitioner to appear before the said SIT and to explain his position but the petitioner miserably failed to do so.

REASONING:

5. I have heard Mr. P.S. Ahluwalia, Ld. Counsel for the petitioner, Mr. Luvinder Sofat, D.A.G for Punjab, at length on various dates and gone through the record. The following paragraphs will reflect the arguments and counter arguments addressed by the parties and its outcome.

6. The present FIR, in which the police arraigned the petitioner as accused on September 28, 2023, traces back to March 05, 2015. The Investigator had received secret and exceptionally reliable information that an international drug mafia was operating at the Pakistan border, and one person named Harbans Singh, who owned land at the border of India and Pakistan was facilitating the drug smuggling, taking advantage of the proximity to Pakistan border. After completing the procedural requirement, a substantial number of police officials raided the premises and recovered massive amounts of Heroin, gold, and pistols from various accused. After completion of the investigation, the Investigator filed a police report under Section 173(2) CrPC against ten accused. Since the 11th accused, Anil Kumar, could not be traced, he was mentioned as a proclaimed offender. The petitioner was neither named as an accused in the FIR nor the report under Section 173 CrPC.

7. The trial against ten accused persons against whom Challan had been presented commenced in the Court of Special Judge Fazilka. At the final stage of the first trial, the State moved an application under Section 319 CrPC to summon the petitioner as an accused. The State filed this application based on the testimonies of PW4, PW5, and PW13. On October 31, 2017, Special Judge Fazilka convicted and sentenced nine accused to various terms mentioned in the judgment and acquitted one accused, whereas accused namely Anil (A-11) has already been declared proclaimed offender. After pronouncing the judgment of conviction, the Sessions Judge also allowed the application filed by the Investigator under Section 319 CrPC and issued non-bailable warrants against the petitioner. The state's counsel had supplied a photocopy of the judgment, and I have also gone through the same. Counsel for the State submits that, per his information, all the convicts have challenged the conviction by filing separate appeals pending adjudication.

8. During the investigation, Gurdev Singh (A-6) [an Ex-chairman of the Market Committee, Dhilwan, and Ex-Sarpanch of Village Lakhn Ke Padde, falling in Bholath constituency], had disclosed his proximity to the accused Sukhpal Singh Khaira, and the petitioner who was PSO to Sukhpal Singh Khaira.

9. Mr. P.S. Ahluwalia, Ld. Counsel for the petitioner stated that apart from Sukhpal Singh Khaira, even the petitioner had challenged the non-bailable warrants, and the order passed in the application under Section 319 CrPC before this Court and subsequently had filed SLP(CrI) No. 009150 of 2017 [Cr.A No. 000886-2019] before the Hon'ble Supreme Court. On May 10, 2019, in Sukhpal Singh Khaira vs The State of Punjab, 2019 (6) SCC 638, a two-member Bench formulated a question of law and referred the matter to a Larger Bench.

10. On December 05, 2022, a Constitutional Bench of Hon'ble Supreme Court, In Sukhpal Singh Khaira vs The State of Punjab, decided the reference in the following terms: -

"[38]. For all the reasons stated above, we answer the questions referred as hereunder.

[39]. (I) Whether the trial court has the power under Section 319 CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

[40]. (II) Whether the trial court has the power under Section 319 CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion."

11. On February 9, 2023, a two-member Bench of Hon'ble Supreme Court passed the following order, in Sukhpal Singh Khaira's matter: -

"[1]. Indisputably, in the present cases the order under Section 319 Cr.P.C. was passed by the learned High Court after the learned Trial Judge had pronounced the order of conviction and sentence against the accused, who were being tried by the learned Trial Judge.

[2]. The order passed under Section 319 Cr.P.C. against the present appellants was challenged before the learned Single Judge vide judgment dated 17th November, 2017 of the High Court by way of revision petitions.

The learned Single Judge rejected the revisions. Aggrieved thereby present appeals were filed.

[3]. Since the Bench hearing the matter in this Court found that it involves an important issue, the matters were referred to a Larger Bench. The Constitution Bench vide its judgment dated 05.12.2022 rendered in Sukhpal Singh Khaira v. The State of Punjab, reported in (2022) 17 SCC 246, has held that once the learned Trial Judge passes an order on sentence, the Court become functus officio and it is not within its jurisdiction to pass an order under Section 319 Cr.P.C.

[4]. Indisputably, in the present case, the orders under Section 319 Cr.P.C. has been passed after the accused, who were facing trial, were convicted and sentenced.

[5]. In view of the law laid down by the Constitution Bench in Sukhpal Singh Khaira (Supra) these appeals are allowed. The order passed by the learned Trial Judge under Section 319 Cr.P.C. against the appellants as well as by the learned Single Judge of the High Court are quashed and set aside."

12. Subsequently, vide order dated September 4, 2023, the Director, Bureau of Investigation, Punjab, constituted another SIT to investigate FIR No.35 of 2015. On September 28, 2023, vide rapat no.5, the SIT added offenses under Section 27-A and 27-B of NDPS Act and also arraigned Gurpreet Singh @ Gopi, Kashmir Singh @ Billa, Major Singh Bajwa, Charanjit Kaur, Sukhpal Singh Khaira, Joga Singh (petitioner, PSO of Sukhpal Singh Khaira) and Munish Kumar (PA of Sukhpal Singh Khaira) as additional accused.

13. Mr. P.S. Ahluwalia, counsel for the petitioner, submits that the petitioner-Joga Singh, had also challenged the summoning order passed by the Special Court in 319 CrPC application and Hon'ble Supreme Court disposed of his petition clarifying that the findings given in Sukhpal Singh Khaira's matter by Hon'ble Supreme Court would also apply to the case of petitioner. He further submits that the entire material based on which the petitioner is being connected with the alleged offense and sought to be arrested was adduced before the Learned Trial Court at the point in time when the petitioner came to be summoned as an additional accused in the exercise of powers under Section 319 of the CrPC.

14. Counsel for the petitioner submits that State could not take into consideration the evidence whatever already adduced before the trial Court at the time of first trial. He also refers the order passed by the Hon'ble Supreme Court in case of Sukhpal Singh Khaira vs The State of Punjab, while deciding the reference and had stated below:

"The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the

main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion, and as such no reliance is being placed on any evidence recorded in the aforesaid first trial."

15. Ld. Deputy Advocate General contended that the investigation against Anil (A-11) was going on, and while filing the police report against the ten accused, it was explicitly mentioned that further investigation was being conducted. Further investigation brought the evidence to surface that the petitioner, who was supposed to discharge his official duty, acted and conspired with Sukhpal Singh Khaira and because his conduit for drug trade and facilitated conversation with handler operating from the United Kingdom. Counsel further submits that the evidence based on which they are opposing the bail of the petitioner, was not part of the criminal trial, had taken place against ten accused. He further submits that the additional evidence, as mentioned and referred to in the reply dated 17.11.2023 filed by Dy.S.P. is sufficient to connect the petitioner with the drug trade. The fact of continuation of investigation was very much in the knowledge of trial Court and all the facts were brought to the notice of the Court when Mr. Sukhpal Singh Khaira was produced before the Court on 28.09.2023. He refers to the order dated 28.09.2023 passed by the Special Judicial Magistrate concerned.

16. It would be appropriate to refer to the order dated 28.09.2023, Annexure P-16 filed in CRWP No.9859 of 2023 which reads as follows:

Accused produced in the court. IO moved application seeking 07 days police remand. Police file perused. Medical certificate of accused also seen and signed. Sh. Sanjeev Kamboj, Sh. N.K. Middha and Sh. Karan Chuchra, Advocates filed power of attorney on behalf of accused.

[2]. Learned APP for the State submits that earlier accused was summoned to face trial by learned Judge, Special Court, Fazilka on the basis of application under Section 319 of Cr.P.C. which order was subsequently dropped on technical ground by Hon'ble Apex Court, but the matter was still open for further investigation. Accused has been nominated in the present case on the basis of thorough inquiry conducted by Special Investigation Team. Sufficient and corroborating evidence has been collected against accused for his involvement in the commission of offence. It is further submitted that the custodial interrogation of accused is required for collection of some more evidence i.e. mobile phones, SIM cards, travel history, recovery of old passport, his links with drug smugglers residing in U.K. and Pakistan and the income derived from drug smuggling. Lastly, he prayed that accused should be remanded to police custody for seven days.

[3]. On the other hand, learned defence counsels have referred towards copy of zimney dated 25.6.2021 recorded in police file and contended that nothing incriminating was found against accused. Even there is no document to show that accused had links with Gurdev Singh Ex-Chairman etc. or contraband allegedly recovered by the police. Once there is no such material collected by SIT during course of inquiry accused

cannot be sent to police custody. Learned defence counsel has further referred towards copies of medical record of accused as well as video recording and submitted that he is suffering from various ailments and therefore, application for police custody should be declined.

[4]. After considering the aforesaid contentions and going through the police diary/file, it is found that custodial interrogation of accused is sought for collecting evidence in the form of mobile phones. SIMs, conversation taken place between accused and other drug smugglers, travel history, passports, links with drug smugglers or Pakistani nationals and the drug money collected from drug smugglers and the use thereof. It is also case of the prosecution that although proceedings under Section 319 Cr.PC. initiated against accused were dropped, but right to further investigate the matter was still open and therefore, involvement of accused is found in the report submitted by Special Investigating Team. Once the matter is under investigation and material evidence is likely to be collected from accused, therefore, reasonable opportunity should be afforded to the investigating agency for proper and effective investigation and as such there are found to be sufficient grounds for his custodial interrogation. Accordingly, accused is sent to police custody till 30.9.2023. I.O is directed to get accused medically examined from Civil Hospital Jalalabad (W) before and after interrogation. He will produce medical certificate on the date fixed.

[5]. Learned counsel for accused also moved application seeking directions to investigating officer to interrogate the accused in the presence of his counsel. Heard. The person arrested has a right to meet his counsel while being interrogated, though not throughout the interrogation. Therefore, accused is allowed to meet his one counsel on every alternate day for 15 minutes in the presence of investigating officer from the date of order.

17. State Counsel also refers to judgment of Hon'ble Supreme Court passed in case State of Haryana v. Samarth Kumar, 2022(3) R.C.R.(Criminal) 991, wherein Hon'ble Supreme Court holds,

[8]. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

[9]. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

18. The petitioner's counsel further argued that the mere exchange of calls between the petitioner who is PSO of Sukhpal Singh Khaira, who was arrested in this FIR in September, will not be the incriminating circumstance. The petitioner's counsel further submits that it is normal for any PSO to stay in touch with the persons to whose protection such PSO was deputed. However, the State's counsel submits that Sukhpal Singh Khaira and the petitioner were contacting their handler from the United Kingdom on the phone of the petitioner, and furthermore, there is prima facie evidence of the petitioner's involvement in the drug dealing in the above captioned FIR.

19. Mr. P.S. Ahluwalia further submits that this Court has already heard arguments and reserved the regular bail application of Sukhpal Singh Khaira, and in case, this Court is inclined to regular bail to Sukhpal Singh Khaira on the same parameters because the allegation against the petitioner is lesser than Sukhpal Singh Khaira as such, there would be no purpose to reject his bail and to send him behind bars. However, Mr. Luvinder Sofat, D.A.G., Punjab, argued that anticipatory and regular bail parameters are entirely different, and Sukhpal Singh Khaira was arrested and subjected to custodial interrogation and is in judicial custody. The petitioner's custodial interrogation is required, and he might be entitled to treatment similar to Sukhpal Singh Khaira only when he files a regular bail under Section 439 CrPC.

20. An analysis of the submissions viz-a-viz evidence collected against the petitioner, as mentioned in reply dated 17.11.2023, points out that the co-accused Charanjit Kaur, who is the sister of co-accused Gurdev Singh, was in touch with petitioner-Joga Singh telephonically and also with Manish Kumar, PA of Sukhpal Singh Khaira. The investigator had obtained phone calls and found evidence of monitoring. The offenses under Sections 27-A and 27-B of the NDPS Act have also been added. Out of 7 newly nominated accused, three have already been arrested, and the trial Court has dismissed bail of 2, whereas LOC has been issued against the remaining two. The investigator has collected many international calls exchanged between the petitioner and Charanjit Kaur. As per Annexure R-1 filed with the reply, there has been interconnectivity between the accused persons. Thus, the evidence collected so far prima facie connects the petitioner with the drugs recovered as per FIR, and his custodial interrogation is required to unearth the role of other persons to unmask the involvement of more international connections, which is required to break the drugs cartel.

21. It has come in the investigation that Major Singh Bajwa, a resident of the United Kingdom, was in touch with the Pakistani Drugs Cartel, who was in touch with the accused, who was based in India. The petitioner was explicitly in touch with Major Singh Bajwa through Charanjit Kaur and the other accused. There is exchange of 100 calls between these accused. To find out the nexus, custodial interrogation of petitioner is required. A perusal of the bail petition does not mention any reason for phone calls except that Sukhpal Singh Khaira was using the petitioner's phone. This appears to be an afterthought and shifting the burden on Sukhpal Singh Khaira because during the period when he was summoned to face trial, which is 6 years back, the petitioner, being a PSO, did not bring this unusual fact to the notice of his superiors and was fully aware of the stage of the investigation. Simply because there is a delay of 8 ½ years from the registration of FIR, would not eclipse the crime because crime never dies.

22. The petitioner seeks anticipatory bail, and the parameters to decide a bail after the accused is subjected to custodial interrogation differ from those interrogated without them in custody. The quantity of heroin that was seized falls in the commercial category. Section 37¹ of the NDPS Act mandates under sub-section (1) (b) of section 37, that no person accused of an offence punishable for offences involving commercial quantity shall be released on bail unless- (i) the Public Prosecutor has been given an opportunity to oppose the application of release, and (ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that accused is not guilty of such offence and is not likely to commit any offence while on bail. Thus, the rigors of S. 37 of the NDPS Act apply in the present case, and the burden is on the petitioner to satisfy the twin conditions put in place by the Legislature under Section 37 of the NDPS Act. Given the legislative mandate of S. 37 of the NDPS Act, the Court can release a person accused of an offence punishable under the NDPS Act for possessing a commercial quantity of contraband only after recording reasonable satisfaction of its rigors.

23. The State's arguments are that a plain reading of Section 37 reveals that the legislature intends to make the law stringent to curb the drug menace. It is further to be noticed that the provisions are couched in negative language, meaning that to grant bail, the Court needs to record a finding that there are reasonable grounds for believing that the petitioner is not guilty of the offense. The burden of proof is also on the petitioner to satisfy the Court about his non-involvement in the case. While interpreting the provisions of Section 37 of the NDPS Act, the Court must be guided by the objective sought to be achieved by putting these stringent conditions. The movement and call detail chart of Gurdev Singh, Charanjit Kaur, and Major Singh Bajwa (Drug cartel handler) and the interpretation of call detail of Sukhpal Singh Khaira, Gurdev Singh, Charanjit Kaur & Major Singh Bajwa and petitioner was verified by ASI/LR Ravinderpal Singh. These technical details and analysis clearly show the cartel members' nexus and business association.

¹ **37. Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

24. Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The stringent conditions of section 37 placed in the statute by the legislature do not create a bar for bail for specified categories, including the commercial quantity; however, it creates hurdles by placing a reverse burden on the accused, and once crossed, the rigors no more exist, and the factors for bail become similar to the bail petitions under general penal statutes like IPC. Thus, both the twin conditions need to be satisfied before a person accused of possessing a commercial quantity of drugs or psychotropic substance is to be released on bail. The first condition is to provide an opportunity to the Public Prosecutor, enabling them to take a stand on the bail application. The second stipulation is that the Court must be satisfied that reasonable grounds exist for believing that the accused is not guilty of such an offense and is not likely to commit any offense while on bail. If either of these conditions is not met, the ban on granting bail operates. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing the accused is not guilty of the alleged offense. Even on fulfilling one of the conditions, the reasonable grounds for believing that the accused is not guilty of such an offense, the Court still cannot give a finding on the assurance that the accused is not likely to commit any such crime again. Thus, the grant or denial of bail for possessing commercial quantity would vary from case to case, depending upon its facts, and the parameters for anticipatory bail are stringent compared to the regular bail when the accused is in judicial custody because the accused has already suffered custodial interrogation.

25. The evidence based on which this Court is considering the bail application is not the evidence from the first trial but includes the evidence unearthed after the co-accused's arrest. The parameters for deciding anticipatory bail are more stringent than those to be considered while deciding regular bail. The quantity involved is commercial, and the burden to satisfy the rigor of condition of Section 37 of NDPS Act, was on the petitioner, which he did not discharge to the satisfaction of the statutory requirements. Further investigation reveals that there is sufficient prima facie evidence to connect the petitioner with the crime. Custodial interrogation is required to find out the involvement of the drug mafia from Pakistan and the role of the handler from the UK. Any detailed discussions about the evidence may prejudice the case of the petitioner or the other accused.

26. Learned Special Judge had dismissed the anticipatory bail of the petitioner by giving elaborative reasons and considering almost every aspect.

27. The grounds in the bail petition do not shift the burden the legislature places on the accused under S. 37 of the NDPS Act. The petitioner has not stated anything in the

bail petition to discharge the burden put by the stringent conditions placed in the statute by the legislature under section 37 of the NDPS Act.

28. In *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, Hon'ble Supreme Court holds,

[19]. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. [See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union of India v. Padam Narain Aggarwal* (2008) 13 SCC 305].

29. In the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner fails to make a case for anticipatory bail under section 438 CrPC.

30. Any observation made hereinabove is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

Petition dismissed. Interim order dated 01-12-2023 is vacated. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

04.01.2024
Jyoti Sharma/AK

Whether speaking/reasoned: Yes
Whether reportable: YES.