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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.53930 of 2024
Date of Decision: 28.10.2024

Himanshu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Prashant Sethi, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

1. Present petition has been filed under Section 482 of BNSS, 2023 praying for the grant of pre-arrest bail to the petitioner in case FIR No.667, dated 19.09.2024, under Section 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Barwala, District Hisar (Annexure P-1) and for staying the arrest of the petitioner during the pendency of the present petition.
2. As per the facts of the case, on 19.09.2024 the police party while on patrolling received a secret information that Mandeep son of Rajender would be transporting a large quantity of narcotic tablets and he was going from Hansi towards Barwala for supplying these narcotics. In case of barricading, he could be arrested on the spot. Report under Section 42 of NDPS Act was prepared and the barricading was laid at the



disclosed place. At about 3:00 p.m., the motor cycle as informed by the secret informer came from Hansi side with two persons riding on it. The motorcycle number was matched and they were stopped by the police. The pillion rider was holding a cardboard box with both the hands. Both the persons riding the motorcycle were apprehended. On asking, they disclosed their names as Sumit and Mandeep. After giving the notice under Section 50 of NDPS Act, the search of cardboard box was conducted and 4800 tablets of Tramadol Hydrochloride were recovered from the same. Both the persons failed to produce any licence regarding possession of the same and hence, the FIR was registered and both were arrested on the spot. The samples were taken from the contraband recovered and sent to the FSL and thus the investigation commenced. During the investigation, both the arrested accused made the disclosure statement regarding complicity of the present petitioner, namely, Himanshu. Hence the petitioner was also arrayed as an accused in the present FIR. Apprehending his arrest, the petitioner approached the Court of learned Additional Sessions Judge, Hisar praying for the grant of anticipatory bail. However after hearing both the sides, the learned Additional Sessions Judge, Hisar finding no merit declined the same vide his order dated 22.10.2024. 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 and frivolously implicated in the



present case. He has submitted that neither the petitioner was named in the secret information nor any recovery has been made from him, however he has been implicated on the basis of disclosure statement made by the co-accused which in itself is an inadmissible evidence. He has submitted that the petitioner is an authorized Pharmacist having valid licence. He has submitted that the recovery has been effected from the co-accused, namely, Sumit and Mandeep. He has submitted that the petitioner is running a medical shop for which he has been issued the licence. He has thus submitted that there being no *prima facie* case made against the petitioner, he deserves to be granted anticipatory bail.

4. Notice of motion.

5. On asking of the Court, Mr. Tanuj Sharma, AAG, Haryana 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 recovered contraband from the co-accused falls under the commercial quantity. He has submitted that during the interrogation of the co-accused, complicity of the petitioner has been *prima facie* proved. He has submitted that the investigation is at threshold and thus custodial interrogation of the petitioner is essential in the present case. He has submitted that the petitioner is facing prosecution in one more case bearing FIR No.145, dated 26.09.2020, under Section 22(c) of NDPS Act. He has submitted that in the facts and circumstances, the present petition deserves to be dismissed.

6. Heard.



7. On hearing learned counsel for the parties and perusing the record, it is apparent that FIR in the present case was registered on the basis of secret information. Co-accused, namely, Sumit and Mandeep were arrested on the spot from whom, 4800 tablets of Tramadol Hydrochloride were recovered. Name of the petitioner has surfaced during the investigation on the basis of disclosure statement made by the co-accused. The quantity recovered from the co-accused is said to be the commercial quantity. The petitioner as submitted before this Court is facing the prosecution in one more case bearing FIR No.145, dated 26.09.2020, under Section 22(c) of NDPS Act. The investigation is at threshold. The quantity recovered from the co-accused is commercial in nature and thus, the provisions of Section 37 of NDPS Act are attracted.

8. 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 at the time of arguing regular bail application or at time of final hearing after conclusion of trial.

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

28.10.2024

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(RAJESH BHARDWAJ)
JUDGE

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