

2024:PHHC:160172



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

212

CRM-M-56744-2024 (O&M)
Date of decision: 02.12.2024

Balwinder Singh @ Binder ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Lakshay Bector, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short* 'BNSS'), is for grant of anticipatory bail to the petitioner in case arising out of FIR No. 17 dated 04.02.2023, registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short* 'NDPS Act') at Police Station Dakha, District Ludhiana.
2. Brief facts of the case relevant for the disposal of the present petition are that on 04.02.2023, co-accused Sunny and Satnam Singh were apprehended by a police party headed by ASI Hamir Singh and recovery of 100 intoxicant tablets was effected from them. They were formally arrested at the spot. On interrogation, they suffered disclosure statement to the effect that they used to purchase intoxicant tablets from the petitioner. On the basis of this disclosure, the petitioner has been nominated as accused in this case. Apprehending his arrest, the petitioner had moved an application for grant of

2024:PHHC:160172



anticipatory bail before the Court of learned Judge, Special Court, Ludhiana but the same had been dismissed, vide order dated 27.09.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He was not found at the spot and has been involved in this case on the basis of the disclosure statement made by the aforesaid co-accused, which is not admissible in evidence. Even otherwise, the quantity of the contraband allegedly recovered from the co-accused is of non-commercial quantity. Though, the petitioner is involved in some more cases of similar nature but he is on bail in those cases. He is ready to join the investigation. No useful purpose would be served by detaining him in custody. Therefore, it is urged that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has relied upon the authority of Hon'ble Supreme Court rendered in ***Tofan Singh vs. State of Tamil Nadu : (2021) 4 SCC 1.***

4. Status report has been filed by the respondent-State. It is submitted therein and learned State counsel has argued that though the petitioner has been nominated in this case on the basis of the disclosure statement suffered by the aforesaid co-accused but during the course of investigation, his complicity in commission of subject offence has been established. After completion of investigation qua aforesaid two co-accused, *challan* was presented before the Court and vide judgment dated 13.07.2023 passed by the learned trial Court, they had pleaded guilty to the charges framed against them and had been convicted and sentenced accordingly. However, the investigation qua the petitioner is still underway as he could not be arrested. It is further submitted that the petitioner does not have clean

2024:PHHC:160172



criminal antecedents as he is involved in four more cases of similar nature. He is a smuggler of intoxicant tablets. His custodial interrogation is must for proper investigation in the matter and for effecting further recovery of contraband, if any, and also for knowing the source from where he procures the contraband. It is, thus, argued that the petition is liable to be dismissed.

5. I have learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Sunny and Satnam Singh, who were apprehended by the police party on 04.02.2023 and recovery of 100 intoxicant tablets (Tramadol Hydrchloride) was effected from them. There is no dispute that the quantity of the contraband recovered from the co-accused does not fall within the ambit of commercial quantity. However, a perusal of the record reveals that the petitioner is a habitual offender and is involved in four more cases under the NDPS Act. He is stated to be a drug peddler. A repeat offender who has shown a pattern of committing similar offences/other offences is not entitled to grant of anticipatory bail. So far as the ratio of law as laid down by Hon'ble Supreme Court in *Tofan Singh's* case (supra) is concerned, the same stands clarified by Hon'ble Supreme Court in *State of Haryana vs. Samarth Kumar : 2022(3) RCR (Criminal) 991*, wherein it has been held that the advantage of decision of *Tofan Singh's* case (supra) can be taken in regular bail application or at the time of final hearing after conclusion of trial and not while seeking concession of pre-arrest bail. The well settled proposition of law is that while considering

2024:PHHC:160172



an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 482 of BNSS are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of BNSS. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, this Court is of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out. Rather his custodial interrogation is required for thorough investigation in the matter by the police and to know the source of contraband. Accordingly, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

02.12.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No