



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

CRM-M-57796-2024
Date of decision: 21.11.2024

Nitin ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Davneet Sangwan, Advocate for the petitioner.

Mr. P.K. Aggarwal, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 482 of BNSS 2023 seeking grant of pre-arrest bail in case having FIR No.317 dated 21.09.2024, under Section 22-c of NDPS Act, (Sections 29/61/85 of NDPS Act added later on), registered at Police Station Sadar Bilaspur, District Yamuna Nagar.

2. The allegations in nutshell are that police apprehended co-accused Aslam Khan and recovered 472 capsules of Tramadol on 21.09.2024. Thereafter, petitioner was nominated as accused on the basis of disclosure statement suffered by Aslam Khan.

3. Counsel appearing on behalf of the petitioner submits that the petitioner is falsely implicated in the present case which was registered against aforesaid Aslam Khan from whom police recovered medical intoxicants. It is further submitted that the alleged disclosure statement



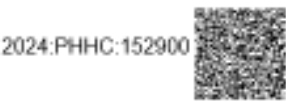
suffered by Aslam Khan against the present petitioner is inadmissible in evidence in the light of the law laid down by Hon'ble Supreme Court in ***Tofan Singh Vs. State of Tamil Nadu (2021) 4 SCC 1***. It is further submitted that petitioner who is having no criminal history is ready to join investigation with the police.

4. The present petition is resisted by the State counsel who submits that the present case is relating to recovery of commercial quantity of contraband from co-accused Aslam Khan. It is further submitted that the custodial interrogation of the petitioner is required for the purpose of proper investigation.

5. I have considered the submissions made by counsel for the parties.

6. The FIR in this case was registered against co-accused Aslam Khan from whom police recovered commercial quantity of medical intoxicants, as detailed above. The rigors of Section 37 NDPS Act are applicable to the instant case which is relating to recovery of commercial quantity of contraband. However, the State counsel has not disputed the fact that the petitioner is having no criminal history and is nominated as accused on the basis of the disclosure statement suffered by co-accused Aslam Khan.

7. The petitioner who was not named in the FIR is nominated as accused on the basis of disclosure statement suffered by co-accused Aslam Khan. The petitioner cannot take benefit of ratio laid down in ***Tofan Singh's case*** (supra), at this initial stage, when he is seeking grant of anticipatory bail. In this regard, reference is made to the decision of Hon'ble



Supreme Court in *State of Haryana Vs. Samarth Kumar 2022 (3) RCR (Criminal) 991*, wherein it was held that in case of this nature, the accused may be able to take advantage of the decision in **Tofan Singh’s case** (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

8. In light of the above, no ground is made out to give concession of anticipatory bail to the petitioner at this stage.
9. Consequently, the present petition is dismissed. However, it is made clear that any observation made herein above is not to be construed as an expression of opinion on the merits of the case.

21.11.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No