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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 06.05.2024

+ **BAIL APPLN. 3482/2023 & CRL.M.(BAIL) 1449/2023**

BHARAT SINGH ..... Petitioner

Through: Mr. Mandeep Baisala, Adv.

Versus

CENTRAL BUREAU OF NARCOTICS .....Respondent

Through: Mr. Satish Aggarwal, Sr. Standing  
Counsel with Mr. Gagan Vaswani,  
Adv.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition under Section 438 of the Code of Criminal Procedure, 1973 has been filed seeking anticipatory bail in Crime No.03/2022 under Sections 8/15/18/21/22/28/29/30/35 of the NDPS Act at PS Central Bureau of Narcotics, P&I Cell, New Delhi.

2. *Vide* order dated 16.10.2023, notice was issued in the present petition and the respondent was directed to file a status report. The respondent has filed a reply dated 30.10.2023, which forms part of the record.

Signature Not Verified

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By: NARENDRA SINGH  
ASWAL  
Signing Date: 08.05.2024  
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3. The case of the prosecution as borne out from the prosecution complaint is that a secret information was received by the Inspector, Preventive and Intelligence Cell, Central Bureau of Narcotics, New Delhi on 16.11.2022 that a person namely, Jagdish Kumar S/o Bheraram R/o. Kalupur, Jalore, Rajasthan along with another smuggler would be carrying about 3.5 kgs of opium. The informer stressed that a huge amount of opium can be recovered from him and his house if the department takes action at the said place on time. Accordingly, a preventive party was constituted which reached the spot at Multani Dhanda, Corner of Gali no. 6, Sadar Thana Road, Paharganj, New Delhi and requested passer byes to join as independent witnesses but they refused. Accordingly, Sh. Gaurav Sharma, Inspector and Sh. Sumit Kumar, LDC were asked to join as witnesses. At about 12:30 hours, a person wearing red coloured half sleeves T Shirt and Black coloured shorts was spotted, who was identified as Jagdish Kumar by the informer. The said person was intercepted and searched after compliance of the provisions of Section 50 of the NDPS Act and during the search of his bag, a black brownish coloured paste like substance kept in white coloured transparent polythene was found in the bag which smelt like opium and the same weighed 500 grams.

4. Accused Jagdish disclosed that the rest of the opium is lying at his rented house, where he lives with his maternal uncle (*Mama*) namely, Laduram and another person Mahipal. Upon reaching the residence of the petitioner, it was found that the main gate of the building was locked, which was opened by someone who was residing at the 1<sup>st</sup> floor of the building. Upon reaching the residence of accused person Jagdish situated at 4<sup>th</sup> floor of the building, the door was found locked. Jagdish called Laduram along



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with Mahipal and they reached the spot with a key of the flat. It is stated in the complaint that upon opening the flat, a very strong smell of opium was found emanating from the room. Apprehending that contraband may be recovered, notices under Section 50 of the Act were served upon accused persons Laduram and Mahipal. Upon search of the bag, which was being carried by Laduram, three squarish packets wrapped in Khaki coloured tap were recovered which weighed 1.024 kg, 1.024 kg and 01.018 kg. The material was found to be opium. Laduram disclosed that the opium belong to all three person namely, Laduram, Mahipal and Jagdish. Similarly, from the personal search of co-accused Mahipal, 16 polythene containing 200 grams opium were recovered from his pocket and seized.

5. Thus, during the search of the rented premises of the said accused persons, total 32.757 kg Poppy Husk, 2 Kg Opium, Smack-1 gram, 120 tablets of Tramadol (containing – 12 gram Tramadol) were recovered. Thus, the total recovery from the possession of the accused persons as well as their residential premises is as follows:

| S.No. | Name of the NDPS Substance | Weight                                |
|-------|----------------------------|---------------------------------------|
| i)    | Opium                      | 5.766 Kgs<br>(commercial quantity)    |
| ii)   | Poppy Straw                | 32.757 Kgs<br>(Intermediate quantity) |
| iii)  | Smack                      | 1 gram (Small quantity)               |
| iv)   | Tramadol Tablets           | 12 grams<br>(Intermediate quantity)   |

6. The learned counsel appearing on behalf of the petitioner at the outset submits that the present petitioner is innocent and is being falsely



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implicated in the present case. He further submits that the petitioner has not been named as an accused person in the FIR and no recovery has been effected from the petitioner or at his instance.

7. He also invites the attention of the Court to the reply filed by the respondent/Central Bureau of Narcotics (CBN) in the present petition to contend that it is the case of the respondent/CBN that co-accused Jagdish Kumar in his voluntary statement dated 17.11.2022 tendered under Section 67 of the NDPS Act has stated to have purchased the Poppy Straw from Bharat Rajput, the petitioner herein.

8. He submits that insofar as other contrabands recovered from the co-accused or from their rented premises, the petitioner has not been stated to be the source. He submits that the Poppy Straw recovered from the co-accused persons is an intermediate quantity therefore, the provisions of Section 37 of the NDPS Act are not attracted.

9. He further submits that the recovery made from the co-accused persons cannot be attributed to the present petitioner. He submits that the other incriminating material against the petitioner is some deposit made in his account by co-accused Jagdish. Explaining the said deposit, the learned counsel submits that the petitioner is a small-time farmer in Madhya Pradesh and also holds an authorization from the YES Bank for money transfers, as he receives the money from various villagers living outside the village who deposit the money in his account for being handed over to their respective families.

10. In support of his contention, he also refers to the Certificate of YES Bank. He submits that the mother of the petitioner is suffering from a renal problem and undergoes dialyses thrice a week and it is on account of ill



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health of his mother that he was not able to appear pursuant to the notice given to him. He submits that the petitioner has clean antecedents inasmuch as there are no cases registered against him. He, therefore, urges to grant anticipatory bail to the petitioner.

11. *Per contra*, learned Senior Standing Counsel for the respondent/CBN contends that the petitioner did not join investigation despite repeated summons having been issued to him under Section 67 of the NDPS Act. He submits that the benefit of the decision of the Hon'ble Supreme Court in ***Toofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*** which lays down that statements under Section 67 of the NDPS are inadmissible, is not available to the petitioner at the stage of anticipatory bail application, in view of the observations made by the Hon'ble Supreme Court in the ***State of Haryana Vs. Samarth Kumar, 2022 SCC Online SC 2087***.

12. He further submits that the total quantity of contraband is commercial in nature, therefore the bar contained in Section 37 of the NDPS Act is applicable to the present petitioner. He submits that the mobile data of co-accused Jagdish Kumar was cloned and it was found that the petitioner was in contact with him.

13. Inviting the attention of the Court to the reply filed by the respondent/CBN, the learned Senior Standing Counsel contends that the petitioner has only been summoned for investigation and the department has not made up its mind to arrest the petitioner so far, therefore, there is no immediate apprehension of his arrest. He further submits that it is a trite law that no protection can be granted to the petitioner directing giving of notice to him in the event, the respondent makes up its mind to arrest the present petitioner. In support of his contention, he places reliance on the



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decision of the Hon'ble Supreme Court in *Union of India vs. Padam Narain Aggarwal Etc.* (2008) 13 SCC 305.

14. Reference has also been made by the learned Senior Standing Counsel appearing on behalf of the respondent/CBN to the statement of Jagdish Kumar recorded under Section 67 of the Act to contend that the smack which was recovered from him was also sent to him by the present petitioner for selling and further the opium which he was going to deliver to one Manpreet at the Railway Station was also to be delivered at the instance of the petitioner.

15. Similarly, reference has also been made to the statement of co-accused Laduram, recorded under Section 67 of the NDPS Act, to contend that the Poppy Straw was supplied by the present petitioner. It is, therefore, argued by the learned Senior Standing Counsel that the present petition seeking anticipatory bail is pre-mature and the same is liable to be dismissed.

16. I have heard the learned counsel for the petitioner, as well as, the learned Senior Standing Counsel for the respondent and perused the material on record.

17. Before advertng to the submissions of the parties, profitable would it be to refer to the factors and parameters to be considered for granting anticipatory bail, which have been enumerated by a Constitutional Bench the Supreme Court in *Sushila Aggarwal Vs. State (NCT of Delhi)*, (2020) 5 SCC 1 read as under :

*“92.4 Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse so,*



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*what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”*

18. In the present case it is true that, there is no contraband recovered from the petitioner or at this instance, possibly because the petitioner has been evading the summons of the investigating agency under Section 67 of the Act. It is also pertinent to note that no reply was ever sent by the petitioner pointing out the difficulty in joining investigation of the present case.

19. Further, the petitioner has been named in the disclosure statement of Jagdish, who stated that the 500 gms of opium recovered from the bag he was carrying had been supplied by the petitioner. There is material to show that accused Jagdish and the present petitioner were in constant contact with one another over telephone. The learned Sr. Standing Counsel has referred to the mobile extraction report which is on record to show that as many 51 telephonic calls have taken place between the petitioner and accused Jagdish during the period from September, 2022 and November, 2022.

20. It is also not in dispute that there are as many as nine banking transactions between the petitioner and accused Jagdish from September, 2022 upto October, 2022. The submission of the learned counsel for the petitioner that the petitioner holds an authorization from the YES Bank for money transfers cannot be considered at this stage as the same is the defence of the petitioner and will be considered by the Ld. Trial Court during the course of trial.



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21. In view of the law laid down in ***Toofan Singh (supra)***, the disclosure statement of co-accused Jagdish recorded under section 67 of the NDPS Act may not be sufficient to hold the petitioner guilty, but at the stage of consideration of anticipatory bail application and in view of the judgment of the Hon'ble Supreme Court in ***State of Haryana Vs. Samarth Kumar (supra)***, the benefit of ***Toofan Singh (supra)*** cannot be extended to the petitioner. The relevant paragraph of the judgment of the Supreme Court in ***State of Haryana Vs. Samarth Kumar (supra)*** reads thus:

*“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC 1.*

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***8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. 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.”***

*(emphasis supplied)*

22. It is apposite to note that co-accused Jagdish was arrested with 500 grams of opium from the bag he was carrying and thereafter, huge quantity of contraband including commercial quantity of opium was recovered from his residence. Further, it also cannot be ignored that accused Jagdish has clearly stated that he has procured the contraband from the petitioner. Similarly, co-accused Laduram has also named the petitioner as the supplier



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of Poppy Straw, though the same is of intermediate quantity. Such statements cannot be ignored at this stage as matter needs to be further investigated to unearth the entire chain of supply of contraband, for which custodial interrogation of petitioner is imperative.

23. In view of the above facts and circumstances, no ground is made out for grant of anticipatory bail to the petitioner.

24. Accordingly, the petition along with pending applications is dismissed.

25. Nothing stated herein above shall be construed as an expression of an opinion on the merits of this case.

26. Order be uploaded on the website of this Court.

**VIKAS MAHAJAN, J.**

**MAY 06, 2024**  
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