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

+ **BAIL APPLN. 3710/2024**

BHARKHA NAGIA

.....Petitioner

Through: Mr. Akshay Bhandari, Mr. Dinesh
Kumar Sharma, Mr. Atul, Mr. Kishal
Kumar, Mr. Janak Raj Ambavat, Mr.
Yusuf, Mr. Anmol Sachdeva & Ms.
Megha, Advocates

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Amit Ahlawat, APP for State

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

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14.10.2024

CRL.M.A.-30825/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

BAIL APPLN. 3710/2024

1. This petition has been filed seeking anticipatory bail in FIR No. 430/2024 PS: Maurya Enclave U/S: 21/25 NDPS Act. the FIR was registered basis a recovery of 188 grams of *heroin* from a bag in possession of one Jasbir Singh@ Jassi. Thereafter, pursuant to registration of FIR and investigation, Jasbir Singh@ Jassi disclosed that he supplies *heroin* for petitioner who pays him for every consignment. He further revealed that recovery which was made from him, was to be delivered, as per him, near Pitampura Metro Station, but he was arrested.



2. Efforts were made to trace out petitioner but she was not found; notices under Section 41A were issued to petitioner on 20th August 2024 and 22nd August 2024 at D-7, MBS Nagar, Sant Garh, Tilak Nagar, New Delhi however she did not join investigation. Subsequently, NBWs were issued against her till 23rd August 2024 pursuant to which Section 82 Cr.P.C. proceedings have been initiated against her which are now listed before the Trial Court on 28th October 2024.
3. Counsel for petitioner states that there is only a transaction of Rs.2000/- two months prior to said recovery which too was for nail art work which she got done from Jasbir Singh@ Jassi. She further claims that the address D-7, MBS Nagar, Sant Garh, Tilak Nagar, New Delhi is not hers and petitioner in fact resides at E-22, Village Chaukhandi, Sant Ghar Extn. New Delhi-110018. She further relies on an entry on the cab booking APP (Uber) (which was at the same time when FIR was registered) basis which it is claimed that the address of petitioner is at E-22, Sant Ghar Extn. Delhi.
4. APP for the States however refutes the same stating that memo of parties itself shows her address as D-7, MBS Nagar, Sant Garh, Tilak Nagar, New Delhi. Further, statement of her brother-in-law (handed up in Court) also shows that petitioner and her husband are residing on another floor of the same premises. It is also highlighted that NBWs had been issued against her pursuant to which Section 82 Cr.P.C. proceedings have been initiated since petitioner has been evading arrest.
5. Counsel for the petitioner further states that as per CCTV footage, police is seen visiting premises E-22, Village Chaukhandi, Sant Garh Extn. New Delhi to which APP responds, on instructions, that since petitioner was not found at D-7 MBS Nagar address, police went looking for her at her other



address. It is further stated by counsel for petitioner that Jasbir Singh@ Jassi has been granted regular bail.

6. APP places reliance on decision of Supreme Court in ***Srikant Upadhyaya & Ors. Vs. State of Bihar & Anr.*** 2024 INSC 202.

7. In these circumstances, the Court is of the opinion that this petition cannot be allowed considering submissions relating to address are evidently untenable in view of what has been stated by the APP. Further in view of proceedings already initiated under Section 82 Cr.P.C. post issuance of NBWs, this petition is not merited.

8. Moreover, regards being implicated on mere disclosure, though the disclosure statement of co-accused under Section 67 NDPS Act is not in itself reliable/admissible in light of observations of the Supreme Court in ***Tofan Singh v. State of Tamil Nadu*** (2021) 4 SCC 1, in the decision in ***State of Haryana v. Samarth Kumar*** order dated 20th July 2022 in Criminal Appeal No. 1005/2002, the Apex Court has held that benefit of the aforesaid decision may not be availed to the accused at the stage of anticipatory bail. Relevant portions of the same are extracted as under:

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.

5. But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail.



Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.

6. Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.

7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

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.

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.

9. Further, this Court also notes the observations recently made by the Apex Court vis-à-vis grant of anticipatory bail in cases related to NDPS Act in **Anarul SK v. The State of West Bengal**, order dated 19th September 2024 in SLP (Crl.) 12621/2024; same are extracted as under:



“4. The Grant of anticipatory bail in cases involving Narcotic Drugs and Psychotropic Substances (NDPS) is a very serious issue. We, therefore, direct the State to consider as to whether it proposes to file an application for the cancellation of bail granted to the other co-accused.”

(emphasis added)

10. Accordingly, this petition stands dismissed.
11. Order be uploaded on the website of this Court.

ANISH DAYAL, J

OCTOBER 14, 2024/sm