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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **BAIL APPLN. 4696/2024**

PRAKASH SINGH

.....Petitioner

Through: Mr. A.K. Singh, Ms.
Samridhi Singh & Mr.
Deepak Kumar, Advs.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP for
the State
SI Rajender Singh, PS-
Narcotics Squad, North
West Distt.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **19.12.2024**

CRL.M.A. 38391/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

BAIL APPLN. 4696/2024 & CRL.M.A. 38392/2024

3. The present application is filed seeking pre-arrest bail in FIR No. 383/2024 dated 15.06.2024, registered at Police Station Model Town, for offence under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act').
4. On the basis of a secret information received on 15.06.2024, the accused Ankit was apprehended with 4.75 k g of Ganja near the Gurudwara, on the road leading to G.T. Karnal Road Chowk. During interrogation, the accused Ankit disclosed that the applicant used to give Ganja to him for delivery to other persons and he used to receive ₹1,000/ ₹1,200 in cash from the



applicant for each successful recovery. He further disclosed that he could point to the rented accommodation of the applicant where the applicant used to hand the contraband to him. He also disclosed that contraband could be found at his own rented accommodation as well. During investigation, based on the disclosure of the co-accused Ankit, a recovery of 4.19 Kg of Ganja was made from his rented accommodation.

5. Thereafter, at the instance of co-accused Ankit, a recovery of 12.91 Kg of Ganja was made from the alleged rented premises of the applicant.

6. The learned counsel for the applicant submits that the applicant has been implicated solely on the basis of the disclosure statement of the co-accused which is inadmissible as evidence.

7. He submits that the concerned premises, from where the recovery of 12.91 Kg of Ganja was made, does not belong to the applicant since he was in occupation of the same only till December, 2023. He submits that the said premises was earlier taken on rent by the applicant in December, 2018 and was vacated in December, 2023.

8. He lastly contends that the recovery, even otherwise, is of intermediate quantity and the bar of Section 37 of the NDPS Act does not apply.

9. The learned Additional Public Prosecutor for the State, at the outset, submits that the applicant has already been declared as an absconder under Section 82 of the Code of Criminal Procedure, 1973 ('CrPC').

10. He submits that the investigation in regard to the applicant has not proceeded since he has been evading the arrest and the anticipatory bail ought not to be granted in an offence involving



narcotic drugs and psychotropic substances.

11. He further submits that there is also CDR connectivity between the applicant and co-accused Ankit.

12. I have heard the counsel and perused the record.

13. The allegation against the applicant, at this stage, is that he used to supply contraband to co-accused Ankit and that 12.91 Kg of contraband has been recovered from his rented premises.

14. The said recovery is of intermediate quantity, however, the same, by no stretch of imagination, can be termed as a minor offence. The maximum punishment for an offence involving intermediate quantity of Ganja is ten years.

15. It is true that the Hon'ble Apex Court, in the case of **Tofan Singh v. State of Tamil Nadu : (2021) 4 SCC 1**, held that a disclosure statement made under Section 67 of the NDPS Act is impermissible as evidence. However, it is relevant to observe that the Court is considering an applications for pre-arrest bail. The applicants will be entitled to the benefit of the said judgment, in the opinion of this Court, after the investigation is completed and the chargesheet is filed.

16. The benefit of non admissibility of the disclosure statement, in the opinion of this Court, is not available at the stage of considering anticipatory bail. The disclosure statement is inadmissible in the absence of corroborative evidence. When the investigation is at nascent stage, the said argument is not available to the accused since the investigative agency has not even got the opportunity to collect the corroborative evidence specially when the accused has not even joined investigation. The Apex Court in the case of **State of Haryana v. Samarth Kumar : 2022 SCC OnLine SC 2087**, has held 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 v. State of Tamil Nadu*, (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 v. 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.”

(emphasis supplied)

17. It is to be kept in mind that the investigation is currently at a nascent stage. The considerations governing the grant of anticipatory bail are materially different than those to be considered while adjudicating application for grant of regular bail, as in the latter case, the accused is already under arrest and substantial investigation has been carried out by the investigating agency.

18. It is trite law that the power to grant a pre-arrest bail is extraordinary in nature and is to be exercised sparingly. Thus, pre-arrest bail cannot be granted in a routine manner.

19. The Hon'ble Apex Court in ***Anarul SK v. The State of West Bengal : Special Leave to Appeal (Crl.) No. 12621/2024*** has also observed that the grant of anticipatory bail in cases involving the narcotic drugs and psychotropic substances is a very serious issue and the same ought not to be granted in a routine manner.

20. Moreover, this Court also cannot be in oblivion of the fact that the allegation against the applicant is of supply of contraband. The same requires thorough investigation which ought not to be curtailed by passing an order granting pre-arrest



bail.

21. It is settled law that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order of pre-arrest bail [Ref. ***State v. Anil Sharma : (1997) 7 SCC 187***].

22. It is also pointed out that the applicant has already been declared as an absconder under Section 82 of the CrPC. he Hon'ble Apex Court in ***State of M.P. v. Pradeep Sharma : (2014) 2 SCC 171*** has specifically observed as under:

*“16. Recently, in ***Lavesh v. State (NCT of Delhi) [(2012) 8 SCC 730 : (2012) 3 SCC (Cri) 1040]*** , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)*

“12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as ‘absconder’. Normally, when the accused is ‘absconding’ and declared as a ‘proclaimed offender’, there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail.”

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.”

(emphasis supplied)

23. Whether the applicant had vacated the premise from where the recovery was made or has been falsely implicated at the instance of the co-accused would be seen during further investigation and the same cannot be commented upon at this stage.

24. In view of the above, in the present circumstances, this



Court is of the opinion that custodial interrogation of the applicants ought not to be denied to the investigating authority.

25. Considering the nature of the offence and the fact that the applicant has been declared as an absconder, this Court is of the opinion, that no ground for grant of pre-arrest bail to the applicant is made out.

26. The application is, therefore, dismissed. Pending application also stands disposed of.

27. It is clarified that any observations made in the present order are for the purpose of deciding the present bail application and should not influence the outcome of the Trial and also not be taken as an expression of opinion on the merits of the case.

AMIT MAHAJAN, J

DECEMBER 19, 2024

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