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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 07.01.2025

Lakho

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. J.K. Singla, Advocate and
Ms. Suman Rani, Advocate for the petitioner.
Mr. Neeraj Madaan, Senior DAG Punjab.

SUMEET GOEL, J. (Oral)

The instant petition has been filed on 04.09.2024 under Section 438 of Cr.P.C., 1973 for grant of anticipatory bail.

As per the judgment rendered by this Court titled as '*Abhishek Jain Vs. State of U.T. Chandigarh and another (CRM-M-31808-2024:2024:PHHC:085784)*', the instant petition is not maintainable under Section 438 of Cr.P.C., 1973. However, keeping in view the entirety of facts and circumstances of the case especially that the instant petition pertains to anticipatory bail, the instant petition is directed to be considered as a petition under Section 482 of BNSS, 2023.

1. Present petition has been filed for grant of anticipatory bail to the petitioner in case FIR No.18 dated 20.01.2023 under Sections 22, 29 of the NDPS Act registered at Police Station City-2, Mansa, District Mansa.



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2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“Copy of ruqa, SHO Sahib, Police Station City-2 Mansa, Jai Hind, Today, I, ASI along with ASI Sukhmander Singh 716/Mansa, HC Manpreet Singh 959/Mansa, SCT Lakhbir Singh 994/Mansa, SCT Tirath Singh 1298/Mansa were travelling on private vehicle driven by me/ASI along with electronic kit departed in the area of Police Station for checking of suspected persons. While checking, Police party was going from Chakerian Phatak Mansa towards Gandhi School Mansa adjoining to Railway Line and when the police party reached near turn of water works tanker constructed near Gandhi School and at main gate of ground of Khalsa School then one person while sitting with wall of Gandhi School and searching something in plastic sack then I, ASI stopped the vehicle on the basis of suspicion and come out from vehicle along with colleagues and walked towards person sitting adjoining with wall who got perplexed after seeing the police party and suddenly stand up and hide the plastic sack of white colour in his right hand and tried to escape in the ground of Khalsa School and I, ASI got apprehended him with the help of colleagues and asked his name and address then who told his name as Amritpal Singh alias Bablu Son of Sadhu Ram, resident of Ward No.5, Street in front of Mata Sandari College, Mansa and whose identification is as under: Aged about 50 years, height 5'-7", fair complexion, cleave shave and hair-cut, mark of injury on left knee, healthy. Thereafter, I, ASI was tried to join any independent witness but no private witness was joined. Thereafter, I, ASI told to apprehended person Amritpal alias Bablu that I, ASI Kaur Singh 127/MNS posted as I.O. at Police Station City 2 Mansa and I am in uniform as per my rank and name plate is affixed. Want to check you and plastic sack of white colour in your possession but you have legal right that you can check yourself and plastic sack of white colour in your possession from any Gazetted Officer or Magistrate Sahib or either bring you along with plastic sack of white colour in your possession before them. Notice under Section 50 of NDPS Act has been issued to him and who put his signatures in Punjabi on notice and ASI Sukhmander Singh 716/Mansa and HC Manpreet Singh 959/Mansa put their testimony. Thereafter, accused Amritpal alias Bablu stated while agreeing that I want to check myself and plastic sack of white colour in my possession from you on the spot. I have full faith upon you. Upon this, information memo, legal



right memo and consent memo was prepared and accused Amritpal Singh alias Bablu put his signatures in Punjabi on it and ASI Sukhmander Singh 716/Mansa and HC Manpreet Singh 959/Mansa put their testimony. Thereafter, I, ASI checked the plastic sack of white colour from the possession of accused Amritpal Singh alias Bablu by opening it in the presence of witnesses and out of which Tramadol Prolonged-Release Tablets IP TRAMWEL SR 100 intoxicant tablets were recovered. Recovered intoxicant tablets were counted and upon counting 10 Strips, each strip containing 10 Tablets i.e. total 100 intoxicant tablets Batch Number was rubbed and Manufactured by Pure & Cure Healthcare Private Limited, Plot No.26A, 27-30, Sector 8-A, I.I.E. SIDCUL RANIPUR, Haridwar-249403 (Uttarakhand). Thereafter, I, ASI kept the recovered 100 intoxicant tablets into same plastic sack of white colour and sack was kept into cloth bag and prepared the bundle. Bundle of intoxicant tablets was duly stamped by me/ASI with his stamp word K.S. Sample stamp was prepared separately. After use, handed over to ASI Sukhmander Singh 716/Mansa. Thereafter, I, ASI were taken the bundle of intoxicant tablets along with Sample stamps into police possession vide separate recovery memo. Witnesses put their testimony. Thereafter, I, ASI conducted the personal search of Amritpal Singh alias Bablu as per procedure and neither any cash nor any valuable thing has been recovered from him and upon this, personal search memo was prepared and above said Amritpal Singh alias Bablu put his signatures in Punjabi and witnesses put their testimony. Accused Amritpal Singh alias Bablu failed to produce any license or permit etc. for keeping intoxicant tablets in his possession. Accused Amritpal Singh alias Bablu committed the offence under Section 22/61/85 of NDPS Act by keeping intoxicant tablets in his possession. Therefore, ruqa against Amritpal Singh alias Bablu has been prepared under the above said Section and sent to Police Station for registration of case through SCT Tirath Singh 1298/Mansa. Case number be intimated after registration of case. PCR Mansa informed through W/M. Special reports be issued. I, ASI along with colleagues present on the spot for investigation. Sd/- Kaur Singh ASI, Police Station City 2 Mansa. Dated 20.01.2023”

3. On 09.09.2024, the following order was passed:

“Petitioner Lakho has filed petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 18 dated 20.01.2023 under Section



22, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), registered at Police Station City-2 Mansa, District Mansa (Annexure P-1).

Learned counsel for petitioner pointed out that present petitioner is named by co-accused Amritpal Singh alias Bablu from whose possession allegedly 100 intoxicant tablets of TRAMWEL SR 100 was recovered. Present petitioner is ready to join the investigation.

Notice of motion.

On asking of this Court, Mr. Kewal Singh, Addl. A.G. Punjab accepts notice on behalf of State and prays for an adjournment to file status report.

Considering the fact that present petitioner is named by co-accused and the fact that petitioner is ready to join the investigation, arrest of petitioner Lakho is stayed till next date of hearing, subject to joining of investigation.

Adjourned to 07.11.2024, for filing status report."

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has further argued that there is no link or connection between the petitioner and the co-accused (from whom the contraband is alleged to have been recovered) and the petitioner is sought to be implicated only on the basis of disclosure statement of the co-accused from whom the contraband is alleged to have been recovered. Learned counsel has further submitted that petitioner has joined the investigation and has cooperated therein. On the strength of these arguments, learned counsel has sought for grant of anticipatory bail to the petitioner.

5. Learned State counsel has filed a status report by way of affidavit of Butta Singh, Deputy Superintendent of Police, Sub-Division Mansa, District Mansa in Court today, which is taken on record. A copy



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thereof has been furnished to learned counsel for the petitioner. Paragraph 3 (vi) of the above-said status report reads as under:-

“(vi) That on 11.09.2024, in compliance of the order dated 09.09.2024, petitioner Lakho Kaur had joined the investigation with the IO. After formally arresting the petitioner Lakho Kaur, she was enlarged on bail by the IO, on furnishing of personal bonds by her. However, in order to ascertain the modus operandi, other persons involved in the drug trafficking and for shattering the drug nexus, custodial interrogation of the petitioner is required to the IO. In case Petitioner is granted with the concession of anticipatory bail there are chances of absconding of the petitioner from the trial of the case and re-engaging in the like offences. In these circumstances, Petitioner does not deserve the relief of concession of anticipatory bail or any other alternative relief from this Hon'ble Court.”

Learned State counsel has raised submissions in tandem with the status report and has sought for rejection of the petition in hand.

6. I have heard learned counsel for the rival parties and have perused the available record.

7. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592***, relevant whereof reads as under:

“155. We answer the reference by stating:

(i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”



7.1. Further, the Hon'ble Supreme Court in a judgment titled as ***State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762***, has held as under:-

“9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, *prima facie*, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

10. It has been held in clear terms in ***Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1***, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”



7.2. Still further, the Hon'ble Supreme Court in a judgment titled as ***Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s)1266/2023 decided on 17.05.2023***, has held as under:

"The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act". His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed.

All pending applications are disposed of."

8. The petitioner is sought to be arraigned as an accused in the FIR in question, solely, on the basis of disclosure statement made by co-accused from whom there is recovery of contraband. As per the prosecution version, there is no other material available to connect the petitioner with the contraband in question. It is not in dispute that the petitioner was not present at the spot. The veracity and weightage required to be attached to the disclosure statement made by the co-accused will be fully tested at the time of trial. However, the same cannot be construed as sufficient by itself to decline the concession of anticipatory bail to the petitioner especially when the petitioner has joined the investigation in terms of the interim protection earlier afforded by this Court and has cooperated therein except for giving



satisfaction of the Police. It is trite law that a plea for anticipatory bail cannot be rejected in case the petitioner is not cooperating to the satisfaction of the Police until and unless cogent material is shown that the petitioner is misusing the concession of interim anticipatory bail. Furthermore, the petitioner is a lady aged about 34 years and has clean antecedents.

9. In view of the above, the interim order dated 09.09.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 482(2) of BNSS, 2023.

10. This order should not be treated as “blanket” order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned ibid and will not operate in respect of any other incident that involves commission of an offence.

11. Liberty is reserved in favour of State to move for cancellation/recall of this order in case the petitioner violates any condition stipulated under Section 482(2) of BNSS, 2023 or upon showing any other sufficient cause.

12. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

January 07, 2025
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No