



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

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CRM-M-64546-2024 (O&M)

Date of decision: 23.01.2025

Om Parkash @ Omparkash Jat**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Sushil Kumar Verma, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Through the instant petition, filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), the petitioner seeks grant of anticipatory bail in case arising out of FIR No. 285 dated 27.10.2024, registered under Section 17-B of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Nathu Sari Chopta, District Sirsa.
2. Brief facts of the case relevant for the disposal of the present petition are that on 27.10.2024, co-accused Krishan Lal @ Kinno was was apprehended by a police party and recovery of 706 grams of opium was effected from him. He was formally arrested at the spot. On interrogation, the above named co-accused disclosed that the recovered contraband was purchased from the present petitioner. On the basis of the same, the petitioner has been nominated in this case. Apprehending his arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned

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Additional Sessions Judge, Sirsa but the same had been dismissed, vide order dated 11.12.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. The petitioner was not found at the spot and has been involved in this case on the basis of the disclosure statement made by the co-accused, which is not admissible in law against him. There is nothing on record to connect the petitioner with the subject crime. The petitioner is the resident of District Chittorgarh, Rajasthan, where as the co-accused is the resident of District Sirsa and there is a distance of about 600 kms. between both the places. Hence, it is improbable that the petitioner was involved in the subject crime. Even otherwise, the quantity of the recovered contraband does not fall within the commercial quantity. No recovery is to be effected from the petitioner. He is ready to join the investigation. No useful purpose would be served by detaining him into custody. Therefore, it is urged that the petition deserves to be allowed. To fortify his argument, learned counsel for the petitioner has relied upon the authority of Hon'ble Supreme Court rendered in ***Tofan Singh vs. State of Tamil Nadu : (2021) 4 SCC 1.***

4. Status report has been filed by the respondent-State. It is submitted therein and learned Assistant Advocate General, Haryana has argued that though the petitioner has been nominated in this case on the basis of the disclosure suffered by the co-accused but during the course of investigation, his complicity in the subject crime has been duly established. The co-accused had purchased the recovered contraband from the present petitioner by transferring an amount of Rs. 28,000/- in the bank account of the petitioner and had also paid an amount of Rs. 65,000/-in cash. Call details

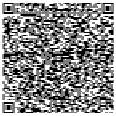
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record of the petitioner with the above named co-accused has been procured, as per which, they had exchanged several phone calls during relevant time. Custodial interrogation of the petitioner is must for proper investigation in the matter as well as for knowing the source of the contraband and also for effecting further recovery of contraband, if any. It is, thus, argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The petitioner has been nominated in this case on the basis of the disclosure made by co-accused Krishan Lal @ Kinno, who was apprehended by the police party on 27.10.2024 and from whose custody, recovery of 706 grams of opium was effected. The allegation against the petitioner is that he had sold the recovered contraband to the above named co-accused and in return, he had received an amount of Rs. 28,000/- from him into his bank account, apart from receiving Rs. 65,000/- in cash. As per investigation conducted so far, it has been found that the petitioner has exchanged several phone calls during the relevant period. The allegations against the petitioner are serious in nature. Hence, in order to conduct a thorough and proper investigation in the matter, the custodial interrogation of the petitioner is required. So far as the ratio of law as laid down by Hon'ble Supreme Court in ***Tofan Singh***'s case (supra) is concerned, the same stands clarified by Hon'ble Supreme Court in ***State of Haryana vs. Samarth Kumar : 2022(3) RCR (Criminal) 991***, wherein it has been held that the advantage of decision of ***Tofan Singh***'s case (supra) can be taken in regular bail application or at the time of final hearing after conclusion of trial and not while seeking concession



of pre-arrest bail. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 482 of BNSS are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of BNSS. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather his custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

23.01.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No