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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54032-2024 (O&M)

Date of Decision: 09.01.2025

ASHU

.. Petitioner

Vs.

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Amrit Paul Nahar, Advocate for the petitioner.

Mr. Yuvraj Singh Tiwana, Asstt. A.G., Punjab.

...

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 482 of BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No.178 dated 17.08.2024, under Sections 21(b), 61-85 of NDPS Act (Section 29 NDPS Act added later on), registered at Police Station Dasuya, District Hoshiarpur.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:

"To The S.H.O, Police Station Dasuya, Jai Hind. Today, I ASI alongwith SI/LR Navjot Singh no. 1971/HSP(Civil Dûress), HC Rohit Minhas No. 1280/HSP (Civil Dress), HC Mantej Singh. 439/HSP (Civil Dress), HC Sandeep Minhas No. 1092/HSP (Civil Dress), That on private vehicle for investigation regarding FIR no. 244 dated 29/07/2024 U/s 21-B/29-61-85 NDPS Act police station City Hoshiarpur were present village kotli khurd at police station Dasuya Distt. Hoshiarpur where Arun kumar @ Laddu S/o Bhola resident of ward No. 1 street no. 10 police station Sukhyabaad who was named in the aforementioned FIR was arrested who at the time of interrogation in the aforementioned FIR has revealed that "I am in the business of supplying drugs. A few days ago, I had brought 300gms of heroin from my acquaintance. Out of which some of the heroin I had supplied to my customers and even now also I came for purpose of supplying the drugs at village kotli khurd of Dasuya and there you caught me. Now the heroin that I have with me in my Mahindra Thar car bearing no. PB07-CF-0921 was hide under the driver seat in blak polythene bag. That my aforementioned said car is parked on the side of the road in village Kotli khurd, and only I know about that. That I can get it recovered



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on my own." Consent memo was written. On the consent memo, the witness gave their testimony on it and aforementioned accused signed his signature. After which accused Arun kuma @ Laddu, according to the memo which was made by him had walked ahead of the police party and brought the police party to the above mentioned parked Mahindra Thar standing on the link road of village kotli khurd. On which before searching the above Mahindra Thar car, an attempt was made to make public witness in the police party but each person expressed their own compulsion. Upon which, I ASI and in presence of my fellow associate, asked accused Arun Kumar @ Laddu to open the lock of his Mahindra Thar car number PB07-CF-0921 with his own hand and opened the driver's side window to took out a black weighted polythene bag hidden under the seat and presented it with his hand. Upon opening it, heroin was recovered from it. That after weighing the recovered heroin through computer weight machine was 157 grams alongwith bag. After putting the recovered heroin in a separate plastic box and preparing the parcel, the parcel was sealed by I ASI with my stamp letter S.S. and preparing the parcel was prepared separately and after the use of stamp, was handed over to HC Rohit Minhas No. 1280/HSP. That recovered 157 grams of heroin stamped with seal S.S. alongwith Mahindra Thar car number PB07-CF-0921 without documents was taken into custody by police through recovery memo. Accused Arun kumar@ Laddu S/o Bhola resident of ward no. 01 street No. 10 Sukhiyabaad police station Sadar Hoshiarpur has committed the offence U/s 21-B-61-85 of NDPS Act by keeping 157 gms of heroin in his possession. Therefore by writing the ruka in the aforementioned case has been sent to HC Sandeep Manhas No. 1092/HSP Dasuya District Hoshiarpur to register the same. After registering the case, number be intimated. I ASI and fellow employees were investigating the matter on the spot. SD/ Sushil Singh ASI CIA staff, Hoshiarpur dated 17/08/2024."

3. On 29.10.2024, the following order was passed:-

"The petitioner seeks grant of anticipatory bail in respect of a case registered vide FIR No.178, dated 17.8.2024 at Police Station Dasuya, District Hoshiarpur, under Sections 21(b), 61, 85 of Narcotic Drugs and Psychotropic Substances Act, 1985, wherein offence under Section 29 of NDPS Act was added later on.

It is the case of prosecution that on 17.8.2024 one Arun Kumar @ Ladddu was apprehended by the police, who was found to be in possession of 157 grams of 'heroin'. It is further the case of prosecution that during the course of interrogation, the aforesaid Arun Kumar @ Ladddu disclosed that he had been selling the contraband to Sahil Joshi, Ashu, Rubal, Shaparish Adia @ Chhotu and Rajat.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case solely on the basis of disclosure statement of co-accused, which would not carry any evidentiary value in the absence of any other connecting evidence.

Notice of motion for 9.1.2025.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C. "

4. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated into the FIR in question. Learned counsel has



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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 (on instructions from ASI Sushil Singh) has submitted that the petitioner has joined investigation in terms of interim order/protection earlier afforded to the petitioner and is not required for custodial interrogation. He has, however, submitted that since the FIR in question is under NDPS Act of 1985, the petitioner ought not to be extended the concession of anticipatory bail.

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"



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More recently, the Hon'ble Supreme Court in a judgment titled as '*Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau*' 2024 INSC 290', has reiterated the *ratio decidendi* of the judgment of Hon'ble Supreme Court in the case of Tofan Singh (*supra*).

7.1 Further, the Hon'ble Supreme Court; while dealing with a plea for bail in a case under NDPS Act, 1985; 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 (CrI.) 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 *arresis* 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 (CrI.) No. 22702/2020, SLP (CrI.) No. 1454/2021, SLP (CrI.) No. 1465/2021, SLP (CrI.) No. 1773-74/2021 and SLP (CrI.) 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; while dealing with a plea for grant of anticipatory bail in a case under NDPS Act, 1985; in a judgment titled as '*Vijay Singh vs. The State of Haryana, bearing Special*



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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."

7.3 It is a well established principle of law that at the incipient stage of investigation, when the investigation is still ongoing, the Court must restraint and refrain from undertaking a meticulous examination of evidence collected thus far. The process of investigation is dynamic, and evidence may evolve or be corroborated, as the investigation progresses. However, as anticipatory bail pertains to life and liberty of individual, courts are obligated to strike a balance between safeguarding personal liberty and ensuring the effective administration of justice as also investigation.

The final evidentiary value and admissibility of the disclosure statement made by a co-accused fall within the domain of the trial Court and are to be adjudicated during the course of the trial in accordance with established principles of law. However, while adjudicating a plea for anticipatory bail, this court cannot remain oblivious to the circumstances under which the petitioner has been arraigned or implicated, including the nature of the allegations, the evidence linking the petitioner to the offence



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as well as the specific role attributed to the petitioner in the commission of the alleged offence. A *prima facie* examination of these factors is essential to ensure that the process of law is not misused, abused or misdirected.

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.

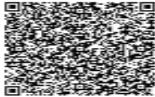
The petitioner is stated to be involved in two other cases under NDPS Act, 1985 but, in the considered opinion of this Court, the factum of petitioner being involved in other criminal cases would not be a reason, sufficient by itself, to decline the concession of anticipatory bail to the petitioner qua the FIR in question especially when the petitioner has been able to make out a case for grant of anticipatory bail in the FIR in question on merits thereof.

9. In view of above, the petition is allowed and interim order dated 29.10.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 482(2) BNSS, 2023.

10. This order should not be treated as “blanket” order. It will not be interpreted as granting petitioner indefinite protection from arrest. It



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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) 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.

13. Pending applications, if any, shall also stand disposed off.

09.01.2025

Jasmine Kaur

**(SUMEET GOEL)
JUDGE**

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No