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CRM-M-38181-2024 (O&M)**201-B****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-38181-2024 (O&M)****Date of Decision: 13.01.2025**

SUBHASH CHANDER

.. Petitioner**Vs.**

STATE OF HARYANA

..Respondent**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present: Mr. Himanshu Garg, Advocate for
Mr. Aditya Sanghi, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

...

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.372 dated 23.07.2024, under Sections 15(c)/29 of NDPS Act, 1985, registered at Police Station Dabwali Sadar, District Sirsa, Haryana.

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 Station House Officer, Police Station Sadar Dabwali. Jai Hind. Today I ASI along with HC Jaiwardhan No. 56/DWL, EHC Rajwinder Singh No. 446/DWL, C. Mandroop 545/DWL, SPO Harwinder Singh No. 87 boarding Government vehicle Neo Bolero white Coloured No. HR24GV-2526 driver EHC Purshottam No. 447/DWL in connection of Patrolling and investigation of crime of drugs were present during Nakabandi between Village Lohgarh and Jotanwali near Dera Makhidas where special informer met myself ASI and told that ahead of village Jotanwali Haripira Road near Border two youngsters are standing they are having Motorcycle Hero Splendour Number RJ13MS-8564 and near the Motorcycle itself one white Sheet (Tarpaulin) Three/Four black coloured sacks have been kept by covering the same, that I have full suspicion that in these sacks there is poppy husk and these persons are trying to sell this poppy husk to someone, if raid be conducted immediately then these persons can be nabbed along with poppy husk at the spot itself, that since the information being considerable, so myself ASI prepared notice under section 42 NDPS Act, for information of senior

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officers and sent it by hand through EHC Rajwinder Singh No. 446/DWL to Police Station Sadar Dabwali, that myself ASI along with HC Jaywardhan No. 56/DWL, C. Mandroop 545/DWL, SPO Harwinder Singh No. 87 boarding Government Vehicle No. HR24GV-2526 driver EHC Purshottan No. 447/DWL departed to the spot as per information and from village Jotanwali reached towards Rajasthan Border, then to our left side on the side of the Road two boys were seen near the Motorcycle, that we took our Government vehicle near them and stopped then both those boys got nervous and left their Motorcycle there itself and about to flee then myself ASI on the basis of suspicion with the help of fellow employees nabbed both those boys after running little distance and both of them brought near the Motorcycle and near the Motorcycle in a pit underneath white sheet (tarpaulin) lying sacks asked their names and address then first one disclosed his name as Sunil Kumar son of Kaluram resident of Dhani 1 HRP Haripura District Hanumangarh (Raj.) and second boy disclosed his name as Radheshyam son of Omparkash son of Aduram Resident of Village Haripura District Hanumangarh (Raj.), that a sheet lying with in a pit was removed and saw then underneath the sheet four black coloured plastic sacks in which some goods were found filled and inlet of all four sacks was tied and Motorcycle was checked then number of the Motorcycle was found as RJ13MS-8564 make Hero Splendour, its Chassis Number MBLHA10BFF4E04239 and Engine Number HA10ERFE03958 black coloured was found, that suspects Sunil Kumar and Radheshyam above named told that this Motorcycle and all four sacks covered with a sheet are ours, that myself ASI asked about the goods in these sacks then both of them got nervous and could not give any satisfactory answer ”

3. On 06.09.2024, the following order was passed:-

“Status report already filed through Registry is taken on record, subject to just exceptions.

Learned counsel for petitioner stated that name of petitioner has cropped up on the disclosure statements of co-accused namely Sunil Kumar and Radhey Shyam and no contraband was recovered from his possession.

Keeping in view the aforesaid fact, arrest of present petitioner is stayed till the next date of hearing, subject to his joining investigation.

Adjourned to 06.11.2024.

To be heard alongwith CRM-M-44098-2024.”

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



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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 SI Anand Kumar) 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"

More recently, the Hon'ble Supreme Court in a judgment titled as '***Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Babu 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*).



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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 (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 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 (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; 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 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

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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 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-

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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 four 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 06.09.2024 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 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



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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.

13.01.2025

Jasmine Kaur

**(SUMEET GOEL)
JUDGE**

Whether speaking/reasoned

Yes No

Whether reportable

Yes No