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

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CRM-M-62196-2024 (O&M)

Date of decision: 10.01.2025

Harbhajan Singh @ Saabhi**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Raghav Soni, Advocate
for the petitioner.

Ms. Himani Arora, Assistant Advocate General, Punjab.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking anticipatory bail in case arising out of FIR No. 184 dated 09.10.2024, registered under Sections 21©, 29 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) at Police Station Chheharta, District Amritsar.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that on receiving a secret information that co-accused Akashdeep Singh @ Akash and Satinderpal Singh @ Satti, who are real brothers, were involved in smuggling with Pakistani smugglers, a raid was conducted in their house and on the demarcation of co-accused Akashdeep Singh @ Akash, 2 kgs. and 50 grams of heroin along with drug money of Rs.2.32 Lakhs was recovered, whereas 2 kgs. of heroin and drug money of Rs. 2 Lakhs was recovered on the demarcation of co-accused Satinderpal Singh @ Satti. They were formally arrested at the spot. During the course of investigation, the disclosure statements

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of above named co-accused were recorded and on the basis of the same, some other persons were also nominated in this case and certain recoveries of contraband were effected. On 14.10.2024, co-accused Akashdeep Singh @ Akash made further disclosure, wherein he stated that he had given one pistol and some live cartridges to the present petitioner. On the basis of the said disclosure, 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 Judge, Special Court, Amritsar but the same had been dismissed, vide order dated 27.11.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. He has been nominated in this case on the basis of the disclosure statement suffered by the above named co-accused, which is not admissible in law. Even otherwise, the only allegation levelled against the petitioner is that co-accused Akashdeep Singh @ Akash had given him a pistol along with some live cartridges. There is nothing on record to connect the petitioner with the subject offences. 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 Deputy Advocate General, Punjab has argued that although the petitioner has been nominated in this case on the basis of the disclosure statement suffered by the above named co-accused but during the course of investigation, his complicity in the subject crime has been established. He is part

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of a gang, which is involved in cross border smuggling of narcotics and illegal weapons. The weapon given to him by the co-accused is to be recovered. Custodial interrogation of the petitioner is must for proper investigation in the matter as well as for knowing the source of supply of illegal weapons. The criminal antecedents of the petitioner are not clean as he is already involved in two criminal cases for commission of offences punishable under Sections 307 and Section 25, 27 of the Arms Act. 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 Akashdeep Singh @ Akash, who was apprehended by the police party along with his brother Satinderpal Singh @ Satti on 09.10.2024 and recovery of 04 kgs. and 50 grams of heroin and drug money of Rs. 4.32 Lakhs was effected from them. The allegations against the petitioner are that co-accused Akashdeep Singh @ Akash had given him a pistol and some live cartridges. The criminal antecedents of the petitioner are not clean as he is shown to be involved in two more criminal cases. The custodial interrogation of the petitioner is required for proper investigation in the matter and for effecting recovery of the illegal weapon. Learned counsel for the petitioner has relied upon *Tofan Singh's* case (supra) to submit that the disclosure statement suffered by the co-accused is not admissible against the petitioner. The ratio of law laid down by Hon'ble Supreme Court in this judgment is not disputed but 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

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(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.

10.01.2025

*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*