



**214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-58532-2024
Date of decision: 30.01.2025**

Kamal SinghPetitioner

versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Prabhjot Singh Mann, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

RAJESH BHARDWAJ, J.

1. Petitioner has approached this Court for grant of anticipatory bail to him in case FIR No.241 dated 07.09.2023, under Sections 15(c), 61, 85 of NDPS Act, registered at Police Station Sardar Narwana.
2. Succinctly, facts of the case are that when the police party on 07.09.2023 was at Bus Stand Village Dumrakhan Khurd in search regarding the narcotics, received a secret information to the effect that Sandeep @ Koka had taken land on lease and he was sitting along with poppy husk outside the tubewell room situated in the field of Raja son of Bartu. It was informed that in case of raid, he could be apprehended along with the contraband. On receiving the information, search party reached at the disclosed place and found a person who on asking disclosed his name as Sandeep @ Koka. He was sitting with the plastic bags. On suspicion, bags were searched after giving him notice and the poppy husk was recovered from the same. On weighing the total poppy husk recovered was found to be 52 kg and 700 grams. He failed to produce any license regarding the possession of the contraband and thus, was arrested on the



spot. On registration of the FIR, the investigation commenced and the samples taken were sent to the FSL Lab. During the investigation, disclosure statement of co-accused Sandeep @ Koka was recorded wherein he disclosed about the petitioner that the contraband recovered from him was purchased from the petitioner and co-accused Kamal Singh son of Narayan Singh. Hence, he was arrayed as an accused. Apprehending arrest, petitioner approached the Court of learned Additional Sessions Judge, Jind praying for grant of anticipatory bail. However, after hearing counsel for both the sides, the same was declined vide order dated 05.11.2024. Hence, petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that petitioner has been falsely and frivolously implicated in this case. He submits that neither petitioner is named in the FIR nor there is any recovery effected from him. He submits that the recovery of contraband weighing 52 kg 700 grams is effected from co-accused Sandeep @ Koka and not from the petitioner. He submits that on the arrest of co-accused Sandeep @ Koka on 07.09.2023, two disclosure statements were recorded by the investigating agencies. The first disclosure statement was recorded on 08.09.2023 however, his second disclosure statement was recorded on 09.09.2023 and in this second disclosure statement, petitioner was named as an accused by co-accused Sandeep @ Koka. He submits that false implication of the petitioner is evident from the fact that his name was not disclosed by co-accused in the first disclosure statement but in the second disclosure statement which is after due deliberations. He submits that as per the disclosure statement, co-accused Sandeep @ Koka met co-accused Kamal Singh son of Narayan Singh and it was Kamal Singh son of



Narayan Singh who introduced Sandeep @ Koka with his brother-in-law i.e. the petitioner. He submits that the disclosure statement is to the effect that co-accused Sandeep @ Koka purchased the contraband from the petitioner and co-accused Kamal son of Narayan Singh. He submits that the disclosure statement of the co-accused is not an admissible evidence and thus, there is no evidence against the petitioner for his complicity. He thus, submits that there being no *prima facie* case against the petitioner, he deserves to be granted anticipatory bail.

4. Per contra, learned counsel for the State has vehemently opposed the submissions made by counsel for the petitioner. He has drawn the attention of this Court to the status report filed by way of affidavit of Mr. Deepak Kumar, HPS, Deputy Superintendent of Police, STF(H) Unit, Hisar. He has submitted that though petitioner is not named in the FIR however, his name surfaced during investigation when the disclosure statement of co-accused Sandeep @ Koka from whom the poppy husk weighing 52 kg 700 grams was recovered, was made and as such, the complicity of the petitioner has been surfaced. He submits that the contraband recovered in the present case from co-accused falls under the category of commercial quantity. He has submitted that, it has been found during investigation that petitioner obtained Mobile No.93027-75210 using a fake Aadhar Card in the name of Kailash Meghwal son of Bapulal but Kailash Meghwal has made a statement that neither he obtained this mobile number nor he ever used this mobile number and someone else had obtained this number by using a fake Aadhar card in his name. Co-accused Sandeep contacted the petitioner *via* whatsapp call from his mobile number. He has submitted that as per the whatsapp call record, co-accused Sandeep remained in contact with the petitioner. He has



submitted that co-accused Kamal son of Narayan Singh was lodged in Jind Jail and there, he came in contact with co-accused Sandeep who was also lodged in that jail. As per the jail record when co-accused was released on bail, he met petitioner in the year 2019 in Jind Jail and thus, the connection between both of them was established. During interrogation, it was disclosed by co-accused Sandeep that the contraband recovered from him was purchased by him from the petitioner. He thus, submits that it has been found during investigation conducted so far that petitioner sells doda and chura post @ Rs.3,000/- per kg to the truck drivers. It is submitted by counsel for the petitioner that petitioner is involved in 03 other cases which read as under:-

Sr. No.	FIR No.	Dated	Sections	Police Station	Status
1.	23	2012	34(2) of Excise Act	Nalkhera, District Agra, MP	Acquitted on dated 06.08.2022
2.	1023	27.12.2015	223, 224 IPC and Sections 7 and 8 of PC Act	City Jind, Jind	Convicted on dated 29.11.2019
3.	867	25.11.2021	146, 180, 196, 5 of MV Act and Section 3/181 of MP Excise Act	Kotwali Agar, MP	Under trial

5. Thus, it has been further submitted that the bail petition filed by co-accused Kamal son of Narayan Singh has already been dismissed. He thus, submits that no case for the grant of anticipatory bail to the petitioner is made out as the same would adversely affect the ongoing investigation.

6. After hearing counsel for the parties and perusing the record, it is deciphered that name of the petitioner surfaced in the present case on the basis of disclosure statement made by co-accused Sandeep @ Koka



from whom poppy husk weighing 52 kg and 700 grams is recovered which is a commercial quantity and thus, provisions of Section 37 of NDPS Act are attracted. As submitted by learned State counsel, *prima facie* complicity of the petitioner is established during investigation wherein from the call record, it is found that petitioner was in contact with the co-accused. Petitioner is facing trial in three other cases as well. Bail petition filed by co-accused Kamal son of Narayan Singh is already dismissed. Needless to say that investigation is at threshold. Quantity recovered is a commercial quantity.

7. For the consideration of anticipatory bail, the statutory parameters are given under Section 482(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

Where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

When the High Court or the Court of Sessions makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India



without the previous permission of the Court;
(iv) such other condition as may be imposed under sub-section (3) of Section 480, as if the bail were granted under that Section.

8. As per the law settled by the Hon'ble Supreme Court, in **Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632**, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the



making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

9. The Hon'ble Supreme Court in **State Vs. Anil Sharma, (1997) 7SCC 187**, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere



ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

10. Weighing the facts and circumstances of the present case on the anvil of law settled, this Court is of the opinion that the custodial interrogation of the petitioner is very much essential to bring the truth on record and as such, petitioner does not qualify for exercising the extraordinary power by this Court in his favour. Resultantly, the petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

30.01.2025
m. sharma

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