

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

CRM-M No. 54698 of 2021(O&M)

Date of Decision: January 24 , 2022.

Bikram Singh Majithia PETITIONER(s)

Versus

State of Punjab RESPONDENT(s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. R.S.Cheema, Senior Advocate with
Mr. D.S.Sobti, Advocate
Mr. Arshdeep Singh Cheema, Advocate
Ms. Misha Rohtatgi Mohta, Advocate
Mr. Mohit Rai, Advocate
Mr. Ishan Khetarpal, Advocate and
Mr. Somnath Tayal, Advocate
for the petitioner.

Mr. P.Chidambaram, Senior Advocate
Mr. Deepinder Singh Patwalia, Advocate General, Punjab
Mr. Gaurav Garg Dhuriwala, Senior Deputy A.G., Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

Petitioner seeks anticipatory bail in FIR No.0002 dated 20.12.2021 registered under Sections 25, 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act') registered at

Police Station Punjab State Crime, Police Station SAS Nagar.

It is submitted that the petitioner is a mainstream politician and a senior member of the Akali Dal party. The present FIR, it is contended, has been registered for extraneous considerations in a mala-fide manner. It is submitted that there is inexplicable delay in registration of the FIR and a fresh FIR in any case could not have been registered in the given circumstances and as it was incumbent upon the authority to have first sought permission of the competent court before proceeding against the petitioner. Learned counsel for the petitioner submits that the State continued changing officials at the helm of affairs till the officer/officers in question toed the line and ultimately registered the FIR.

Brief facts necessary for adjudication of the matter are that, the abovesaid FIR has been registered on the basis of communication dated 20th of December 2021 by the Director General of Police, Punjab to the Director, Bureau of Investigation, Punjab, Chandigarh, opinion dated 01.12.2021 of the learned Advocate General, Punjab and status report of Mr. Harpreet Singh Sidhu, IPS, ADGP, Special Task Force and Border, Punjab. Said FIR has been registered for the offences punishable under Sections 25, 27(a) 29 of the NDPS Act.

It is stated in communication dated 20.12.2021 that a case be registered on the basis of the status report submitted by the STF in CWP No.20359 of 2013 and CWP No.15916 of 2017 and further investigate the same. Said status report by the head of the STF had been filed pursuant to orders of the Division Bench in CWP No.20359 of 2013 of this High Court. It is stated in this communication dated 20th of December 2021 that many of the persons prosecuted in the cases had been convicted for the offences punishable under the NDPS Act by the court of competent jurisdiction and therefore their involvement in drug

trafficking and distribution of narcotics is an offence. Facilitating, abetting, conspiring, assisting and gaining financial benefit from such offences and profiting from and using such illegal proceeds and money received from such activities of drug trafficking is also stated to be an offence. It is further stated that intentional use of government machinery including vehicles and security personnel, other government facilities for assisting, facilitating and abetting drug trafficking and other related illegal activities is an offence. It is stated that since a number of cases have been registered in various districts in the matter, it would be appropriate to get the present case registered at Police Station State Crime (Bureau of Investigation) SAS Nagar, to be investigated by a special investigation team for which orders were issued separately. Thereafter opinion dated 01.12.2021 of the learned Advocate General, Punjab is reproduced in the said FIR.

It is mentioned by the learned Advocate General, Punjab that past laxity in dealing with the issue has accentuated the problem. While observing that the enormity of the problem of drug menace was pointed out in a letter by a retired IPS officer, namely, Mr. Shashikant which resulted in the High Court taking suo moto cognizance of the matter on 16th of September 2019 (CWP No.20359 of 2013), reference was made to order dated 28th of November 2017 passed in the said writ petition, the relevant extract of which is reproduced in the FIR itself, wherein Mr. Harpreet Singh Sidhu, head of the STF, was directed to look into the allegations against the petitioner, his complicity in the matter as contained in CM No.15916-CWP of 2017 in the above said writ petition. It was directed that status report be filed in this respect as well the allegations regarding one Inspector Inderjit Singh who was allegedly found to be in collusion with drug

traffickers and qua whom complicity with Mr. Raj Jit Singh, SSP Moga, was alleged. The head of the STF was to file a status report specifically in the context of breaking the nexus between the law enforcement agency and drug traffickers. Exchange of information by the Enforcement Directorate with the Head of the STF also finds reference in this order. It is further specifically observed in the said order dated 28th of November 2017 passed by the Division Bench that no order or observation was made by the court to infer that the scope of investigation to be made by the Enforcement Directorate had been curtailed in any manner and that the law enforcement agencies are to proceed strictly in accordance with law in the matters within their purview. Sh. Raj Jit Singh, SSP, Moga filed a miscellaneous application seeking transfer of investigation whereupon a Special Investigating Team (SIT) headed by Mr. Siddhartha Chattopadhyaya was constituted by the Division Bench. The SIT was directed to submit its report in sealed cover. The report was submitted in sealed cover before the Division Bench on 1st of February 2018.

Relevant extract of order dated 1st of February 2018, passed by the Division Bench, as referred to in the opinion of the Ld. Advocate General is reproduced in the FIR, wherein it is stated that after perusal, the court was of the view that a copy of the report be handed over in sealed cover to Mr. Niranjana Singh, Deputy Director Enforcement Directorate to consider the prima facie fact findings and proceed further in accordance with law. It is further observed that the aforesaid report submitted by Mr. HS Sidhu, Head STF, requires consideration at the hands of the State Government also, for which a sealed copy thereof was directed to be handed over to the then Advocate General Punjab. Furthermore the Enforcement Directorate as well as the State Government were

directed to submit their respective Opinion-cum-Status reports on the next date of hearing. The report submitted by Mr. Sidhu was resealed and directed to be kept in the custody of the Registrar (Judicial) of this court.

Learned Advocate General, Punjab in his opinion dated 1st of December 2021, opined that the collective perusal of orders dated 28th of November 2017 and 1st of February 2018 do not create an embargo on the law enforcement agencies that is the State police and the Enforcement Directorate to act on the prime facie status report filed by the STF especially keeping in view the fact that the High Court had sought an Opinion-cum-Status report from the State on the basis of the Status Report submitted by the head of the STF, which can be done only qua an action that has been taken, post consideration. It is further opined in disagreement with his Ld. Predecessor, that status report of continuing investigation being filed in a sealed cover does not mean that there is a bar on the law enforcement agencies for acting on the said report.

Thereafter the status report filed by Mr. HS Sidhu, Head of the STF in CWP 20359 of 2013 has been reproduced in extenso in the FIR in question. Reference is made to order dated 28th of November 2017 passed in the above said CWP and Civil Miscellaneous 15916-CWP of 2017 filed therein, seeking investigation into the complicity of the petitioner in the drug trade as it was alleged that during the course of investigation by Mr. Niranjn Singh, Director of the Enforcement Directorate, statements of certain persons were recorded which disclosed complicity of the petitioner in the drug trade as he had been providing vehicles and gunmen to international drug mafia namely Satpreet Singh @ Satta, Parminder Singh @ Pindi and Amrinder Singh @ Laddi, who used to stay at his residence when they came from abroad and also travelled in his official vehicle,

while enjoying the security of the petitioner's official gunmen. Thus complicity of the petitioner on the basis of the statements of Jagjit Singh Chahal, Jagdish Singh @ Bholra and Maninder Singh Aulakh was sought to be investigated. It is further averred in the miscellaneous application that the petitioner was the Revenue Minister in the State of Punjab at the time of the commission of offences, brother-in-law of then Deputy Chief Minister of Punjab and brother of a State Minister in the Central Government and that Punjab police had not taken any cognizance of the statements which were recorded by the Enforcement Directorate. The Head of the STF after duly recording his relationship with the petitioner and stating that he has had no contact since the last 14 years with said relatives, proceeded to enquire into the matter. The record examined for the enquiry as received from the Enforcement Directorate is duly mentioned in the report. It is recorded in the report that all findings are exclusively based on the record/statements provided by the Enforcement Directorate and the information provided by the police department did not form the basis thereof.

As per the report, duly reproduced in the FIR, four issues were identified for the purpose of the enquiry which are reproduced as under :-

- I. Did Sh. Bikram Singh Majithia have an association/close relationship with Satpreet Singh @ Satta, Maninder Singh Aulakh @ Bittu Aulakh, Parminder Singh @ Pindi, Amrinder Singh @ Laddi and Jagjit Chahal?
- II. Were Satpreet Singh @ Satta, Jagjit Singh Chahal, Maninder Singh Aulakh, Parminder Singh @ Pindi and Amrinder Singh @ Laddi involved in drug trade?
- III. Whether Sh. Bikram Singh Majithia played a role in supply of pseudoephedrine to Satpreet Singh @ Satta and others?
- IV. Whether there are any links regarding monetary transaction of Sh. Bikram Singh Majithia with the accused figuring in the drug case?"

Reference was made to the statements of Jagdish Singh @ Bhola, Maninder Singh @ Bittu Aulakh and Jagjit Singh Chahal in regard to the role of Satpreet Singh @ Satta. In regard to the role of the petitioner, reference was made to the statements of Jagdish Singh @ Bhola, Maninder Singh @ Bittu Aulakh, Jagjit Singh Chahal, Mrs. Jagminder Kaur wife of Maninder Singh Aulakh @ Bittu Aulakh, Partap Singh (father of Maninder Singh Aulakh) and statements of the petitioner himself as recorded before the Enforcement Directorate. There is a reference to the statements of Maninder Singh Aulakh @ Bittu Aulakh, Jagminder Kaur his wife, Jagjit Singh Chahal to indicate that Satpreet Singh @ Satta was well known and closely associated with the petitioner. There is reproduction of the statement of Maninder Singh Aulakh to the effect that Satpreet Singh @ Satta used to reside at the residence of the petitioner whenever he used to come to India and would also accompany the petitioner to marriage functions, bhogs and cultural affairs. There is also a reference to Satpreet Singh @ Satta sharing the stage with the petitioner and an M.P. from Canada. It is further stated by Bittu Aulakh that the petitioner used to provide a vehicle, driver and gunmen to Satpreet Singh @ Satta during his stay in Punjab and that Satpreet Singh @ Satta used to provide funds for the elections of the petitioner. Reference was made to the statement of the petitioner himself and the difference in his oral and written response before the Enforcement Directorate. The thread to weave the connection between Satpreet Singh @ Satta, Parminder Singh @ Pindi and Amrinder Singh @ Laddi, Jagjeet Singh Chahal, Jagdish Singh Bhola and between the petitioner has been drawn from the statements recorded by the enforcement directorate and as are reproduced in the status report, which is further reproduced in the FIR in question and are not being referred to in extenso

for the sake of brevity.

It is concluded in the report submitted by Mr.Sidhu that the petitioner had a close association/relationship with Satpreet Singh @ Satta, Maninder Singh Aulakh @ Bittu Aulakh, Parminder Singh @ Pindi and others, who were involved in drug trafficking and money laundering related to drugs. It is further concluded on the basis of the statement of Maninder Singh Aulakh and Jagdish Singh @ Bhola that petitioner facilitated the supply of pseudoephedrine to Satpreet Singh @ Satta and Parminder Singh @ Pindi from Jagdish Singh Chahal. It is further concluded that the petitioner had facilitated some settlement between Satpreet Singh @ Satta and Parminder Singh Pindi on one side and Jagdish Singh Chahal on the other. Reference was made to the statement of Jagjit Singh Chahal before the enforcement directorate to the effect that a sum of Rs.35 lakhs in about 7 to 8 installments had been given by him to the petitioner for the purposes of election and it was stated that at that point of time Jagjit Singh Chahal was allegedly involved in manufacturing/Supply of illegal drugs/substances. It is opined that there is sufficient *prima facie* evidence on record to investigate the role of the petitioner as regards the allegations made in the application. It is on the basis of the said status report and opinion of the learned Advocate General that the above said FIR has been registered.

The petitioner filed an application seeking anticipatory bail in the above said FIR which was dismissed by the Ld. Additional Sessions Judge-cum-Judge Special Court, SAS Nagar, Mohali vide order dated 24th of December 2021. Aggrieved therefrom petitioner has approached this court seeking anticipatory bail in FIR No. 02 dated 20th of December 2021.

Learned counsel for the petitioner argued that the present is a classic

case exemplifying extreme accentuation of political rivalry. Alleged offences it is stated relate to the year 2004 to 2014, however despite a Special Task Force, Special Investigating team and the Enforcement Directorate looking into the matter no action whatsoever was taken against the petitioner for such long years. It is submitted that Mr Siddhartha Chattopadhyay, IPS, Director General of Police (DGP), Punjab who recommended/ directed registration of the FIR has a long-standing personal animosity with the leadership of the Shiromani Akali Dal Party. It is submitted that Mr. Chattopadhyay was the supervisory officer to investigate a false case against the patron of the said party, his son and the current president and their family members in the year 2003 but all the family members were acquitted honourably by the learned trial Court in 2010. It is further submitted that the said officer was appointed to act as a tool to advance political interest and despite the fact that Mr. Chattopadhyay is to retire in March 2022 he was appointed in an ad hoc manner in the midnight of 16th of December 2021. The appointment of Mr.Chattopadhyay, it is stated has not been approved by UPSC.

The very basis of registration of the FIR in question is stated to be flawed by learned Senior Counsel for the petitioner, who contended that the status reports are lying in sealed cover before the Division Bench of this High Court, therefore there is no question of filing of a fresh FIR at this stage against the petitioner. Learned counsel further argued that the report submitted by Mr. H.S.Sidhu does not disclose even a *prima facie* offence qua the present petitioner. It is submitted that admittedly Mr. H.S. Sidhu has not even recorded statements of any of the witnesses separately. Reliance has been placed by him on the statements recorded by the Enforcement Directorate which has chosen not to initiate any action against the petitioner till date. Learned senior counsel further

submits that pursuant to the constitution of Supervisory Team by the Division Bench vide order dated 07.10.2015 in CWP No.88 of 2014, as many as 10 supplementary charge sheets were filed and 68 persons were proceeded against but no action was taken against the petitioner as there was no evidence of his involvement. The Enforcement Directorate also proceeded against various other persons but did not press any charges against the petitioner. This, it is submitted, clearly shows that there is no evidence whatsoever against the petitioner to reflect his complicity in the matter.

It is also contended that the disclosure statement(s) of the accused persons are not of any evidentiary value in the absence of any other evidence on record to connect the petitioner with the alleged offence. Learned counsel further asserted that a separate FIR could not have been filed when the allegation is of offence/s related to instances/incidents in respect to which FIRs already stand registered and moreover the matter being *sub judice* before the Division Bench of this court, registration of the FIR in question clearly indicates the extraneous considerations for which it has been registered. Carrying forward this argument learned counsel for the petitioner argues that learned Advocate General has clearly erred while opining that there is no impediment in going ahead with the investigation and registration of the FIR. It is submitted that learned Advocate General has admittedly not had the occasion to even go through the Opinion-cum-Status report which was submitted in sealed cover before the Division Bench on 23rd of May 2018 along with a short affidavit of Dr.Nirmal Jit Singh Kalsi IAS, Additional Chief Secretary Department of Home Affairs and Justice, Punjab. Therefore without even knowing the contents of the opinion which was formed by the government on earlier occasion, the state cannot go ahead to file the

present FIR. Earlier advice of the previous Advocate General, it is submitted, cannot be ignored in such fashion. Mr. Cheema, learned counsel contends that once reliance has been placed on the status report of the STF, there was no impediment before the State in exploring the Opinion-cum-Status report submitted on 01.02.2022 as well. It is vehemently argued that no fresh evidence has been collected, statement recorded or any recovery effected which would suggest involvement of the petitioner in a fresh FIR. Reference is also made to the report by Mr. S.K Asthana, then ADGP, Director Bureau of Investigation on the matter being marked to him by the earlier DGP for his opinion, wherein certain questions have been formulated by Mr. Asthana for seeking legal advice. The questions raised are as to whether investigation can be ordered in cases where trials have already been concluded and whether reinvestigation/further investigation can be carried out in these cases by any other officer except SIT appointed by this court, whether ordering further investigation in these cases would amount to ignoring the directions of the Division Bench in CWP number 188 of 2014, whether it is legally tenable to act upon the report of the Head of STF with the said report being in the custody of the High Court which, despite request, has not been opened and the matter is pending before the court and whether it would be lawful to act upon such a report which has superseded or merged with the subsequent report of the committee appointed by the state of Punjab consisting of the then DGP and Additional Chief Secretary and whether Mr. Harpreet Singh Sidhu, Head STF was entitled to enquire about the alleged role of the petitioner despite having family relations, as to what is the date of the three statements recorded by the Enforcement Directorate to further investigate the role of the petitioner especially when Enforcement Directorate itself has not

proceeded against him and lastly whether latest legal advice of the Advocate General should be relied upon in the light of the fact that it may be contradictory or inconsonance to the previous legal advice tendered by former Advocate General(s) Punjab especially when this case has been deliberated upon since a long period of time. Learned counsel submits that once this officer has, in no uncertain terms, expressed that it is a moot point whether further investigation or reinvestigation can be ordered, registration of FIR against the petitioner is clearly illegal. Moreover, the entire FIR, it is contended is based on conjectures and surmises. There is not an iota of even prima facie evidence to indicate involvement of the petitioner in the commission of the alleged offences.

Learned Additional Sessions Judge-cum-Judge Special Court, SAS Nagar, Mohali, it is submitted, has wrongly declined the concession of anticipatory bail to the petitioner, vide order dated 24th of December 2021 without considering the contentions raised on behalf of the petitioner. The petitioner it is stated has appeared before the investigating agency as and when called during the pendency of this petition pursuant to order dated 10th of January 2022 and the petitioner further undertakes to join investigation as and when required and fully cooperate with the investigation. It is thus prayed that this petition be allowed and the concession of anticipatory bail be afforded to the petitioner.

Per contra, Mr. P Chidambaram, learned senior counsel representing the state of Punjab has vehemently opposed this application while submitting that present is a case which calls for custodial interrogation. It is submitted that the petitioner is a high profile politician and was at a very powerful position in the state hierarchy at the time of commission of the offence and thereafter is also in a position to influence the witnesses in this case. It is asserted that the petitioner

being a sitting MLA, having deep pervasive links in the system is in a position to ensure that effective investigation is not carried out in this matter which is serious and grave. Learned counsel submits that the menace of drugs has in fact created havoc in the state of Punjab leading to a loss of human resource of so many generations. Allegations against the petitioner, it is submitted are extremely grave and material on record shows that the petitioner was closely associated with persons who were indulging in drug trafficking. In fact it has come on record that one of the drug traffickers namely Satpreet Singh @ Satta of Canada was so closely associated with the petitioner that he used to stay at the official residence of the petitioner when he was in India. The petitioner even provided his official car and his gunman for this person. The petitioner is also indicated to be having close relations with other persons involved in drug trafficking that is Maninder Singh Aulakh, Parminder Singh @ Pindi and Jagjeet Singh Chahal. It is submitted that there is prima facie material on record to indicate complicity of the petitioner in the matter.

Learned counsel for the State while supporting the opinion expressed by the learned Advocate General, Punjab submits that there is neither any impediment nor anything remiss in registering a fresh FIR against the petitioner, as what is sought to be investigated in this case is not limited to the role of the petitioner in the pending matters but the ambit of investigation extends to examination about the larger involvement of the petitioner in regard to the nexus between the law enforcement agency and drug traffickers, facilitation of the government machinery and misuse thereof for drug trafficking. Reliance is placed by learned counsel for the respondent on the judgments of the Hon'ble Supreme Court in **Nirmal Singh Kahlon Vs. State of Punjab and others, 2009(1) RCR**

(Criminal) 3. It is further contended that in none of the orders passed by the Division Bench of this court, in the matter pending before it, is there a stay on the registration of any case or taking of any action against the petitioner.

Learned counsel for the state while emphasising the gravity of the matter submits that the same came under judicial scrutiny after receipt of a letter by Mr. Shashikant, retired IPS officer, who highlighted the drug menace in the state of Punjab on 16/09/2013. Thereafter one Jagdish Singh alias Bhola was arrested on a registration of FIR No.56 on 11.11.2013, under Sections 379, 411 473, 468, 471, 212, 120 B of IPC, Sections 21, 22, 25, 25A, 27, 29 of the NDPS Act and Section 25 of the Arms Act at Police Station Banur, District Patiala.

Learned counsel for the state submits that statement of Mr. Harpreet Singh Sidhu has been recorded on 22nd of December 2021, wherein he has stated that he filed the status report before this High Court in the proceedings in CWP 20359 of 2013 regarding the role of the petitioner as to facilitation and abetment of drug trafficking and other illegal activities. Statement of Mr. Niranjan Singh, former Deputy Director, Enforcement Directorate Jalandhar, Punjab is also stated to have been recorded on 22nd of December 2021 wherein he has stated that a status report regarding ECIR/JIZO/06/2013 dated 25/03/2013 was registered by the Enforcement Directorate against Jagdish Singh @ Bhola and Anoop Singh Kahlon in the drugs matter under Prevention of Money Laundering Act, 2002. It is further stated therein that a status report in this regard was submitted in CWP No.20359 of 2013 wherein nexus between the petitioner and Jagdish Bhola has been elucidated. Statement of Jagdish Bhola is also stated to have been recorded on 3rd of January 2022. Learned counsel for the State submits that on the basis of the statement of Sh. Niranjan Singh two (02) persons, namely Satpreet Singh @

Satta and Parminder Singh @ Pindi have been nominated as co-accused in FIR No. 02 on 23rd of December 2021. Learned counsel for the state has also referred to the statement of Jagminder Kaur wife of Maninder Singh Aulakh @ Bittu Aulakh to submit that there is a *prima facie* sufficient evidence on record to proceed against the petitioner. It is urged that acquittal of Jagjit Singh Chahal and Maninder Singh Aulakh and conviction of Jagdish Singh @ Bhola cannot afford a ground for anticipatory bail to the petitioner.

Mr. P. Chidambaram, learned counsel for the State submits that subsequent to registration of the FIR, statement of Inspector Janpal Singh has also been recorded on 22.01.2022, which indicates complicity of the petitioner. It has been stated by Janpal Singh that he interrogated Maninder Singh Aulakh @ Bittu Aulakh in FIR No.56 dated 15.05.2013 under Sections 379/411/468/471/473/120B of IPC and Sections 21/22/25/25A/27/29 of the NDPS Act, registered at Police Station Banur. Maninder Singh Aulakh @ Bittu Aulakh, it is stated, has revealed that he remained associated with the petitioner from year 2006 to 2010 and that Satpreet Singh @ Satta came to India from Edmonton, Canada in 2006 for petitioner's elections and he introduced Maninder Singh to Parminder Singh (also known as 'Pindi uncle'). Details of how meeting of Satpreet Singh @ Satta and Parminder Singh @ Pindi were arranged with Jagjit Singh Chahal in respect to export/supply of Pseudoephedrine and transaction of money thereof is further narrated. It is stated that Parminder Singh @ Pindi talked about one medicine, upon which Jagjit Singh Chahal asked for the formula. Parminder Singh @ Pindi told Maninder Singh Aulakh that he has shared the formula with Jagjit Singh Chahal and that Maninder Singh Aulakh paid Rs.47,60,000/- to Jagjit Singh Chahal in 2009 and

kept Rs.12,50,000/- for himself and this amount was sent by Parminder Singh @ Pindi. The deal was stated to be fixed for a sum of Rs.70,00,000/-. As the sample of 50 Kg. Pseudoephedrine was not approved, Parminder Singh @ Pindi and Amrinder Singh @ Laddi called Maninder Singh Aulakh and Jagjit Singh Chahal returned Rs.32,00,000/-. It is further stated that Pseudoephedrine was supplied in the vehicle of Maninder Singh Aulakh, registration number of which was given. Both the vehicles are stated to be parked by Maninder Singh Aulakh at his house. It is stated by Inspector Janpal Singh that all the details of case FIR No.56 dtd 15.05.2013 are recorded in the case Diary No.54 dated 14.11.2013, Police Station Banur which bears his signatures. It is further informed by learned counsel for the State that summons were issued to Maninder Singh Aulakh @ Bittu Aulakh to appear before the Investigating Agency, but he has responded by saying that he has tested positive for COVID-19. Summons were also issued to one Amarpal Singh Ajnala, who did not appear and now even his mobile phone is switched off. Learned counsel for the State now informs that an FIR No.0002 dated 04.01.2022 under Sections 380/201/120B of IPC has been registered at Police Station Majitha, District Amritsar Rural in respect to the record of the sale-deed of property belonging to the petitioner's wife being found missing. The FIR has been registered at the instance of the Registry Clerk at the office of Sub-Registrar, Majitha. It is submitted that this is relevant as it may provide certain links in the present investigation and is, in fact, indicative of the influence still exerted by the petitioner.

It is reiterated that the petitioner was a key minister of the Akali Party which was in power at the time of commission of the offences and that government machinery was used for the benefit of the drug cartel operating in the

state of Punjab and from outside Punjab. The petitioner, it is stated, is a sitting MLA even today and is still in a very influential position and as such can use his influence and power to threaten, influence and intimidate witnesses as well as destroy the evidence which the investigating agencies are in the process of collecting in the present FIR. Learned counsel for the State submits that in case custodial interrogation of the petitioner is not permitted, the deep, pervasive, intertwined web may not be unearthed in its entirety. It is thus prayed that this petition be dismissed.

Heard learned counsel for the parties at length and have gone through the file with their able assistance.

The petitioner was afforded interim bail on 10.01.2022 with a direction to join investigation and fully cooperate with the Investigating Agency. Certain conditions as detailed in the order, were imposed upon the petitioner while observing that the interim order is without prejudice to the right of the prosecution to press for custodial interrogation. The matter was listed for hearing on 18.01.2022 when a request for adjournment was made on behalf of learned counsel for the petitioner on the ground that he is indisposed. Though not opposing the adjournment on this ground, learned counsel for the State had submitted that the petitioner having joined investigation has not extended full cooperation. The matter was accordingly adjourned for final arguments today.

Admittedly, the petitioner who presently is a sitting MLA and at the relevant time was at the helm of affairs is sought to be proceeded against for offences punishable under Sections 25, 27A, 29 of the NDPS Act, which read as under:-

25. Punishment for allowing premises, etc., to be used for commission of an offence.— Whoever, being the owner or occupier or having the

control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

27. Punishment for financing illicit traffic and harbouring offenders.—Whoever indulges in financing, directly or indirectly, any, of the activities specified in sub-clauses (i) to (v) of clause (viii) of section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.—(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which—

- (a) would constitute an offence if committed within India; or
- (b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

Grave allegations of a serious nature of intentional use of government machinery including vehicles, security personnel and other government facilities for assisting, facilitating and abetting drug trafficking and

other related illegal activities as well as receipt of illegal proceeds from such trafficking have been raised against the petitioner.

Certain facts necessary for adjudication of this matter are that admittedly suo moto cognizance of drug menace in the State of Punjab was taken by the Division Bench of this Court on 16.09.2013, on a letter addressed by Mr. Shashikant, a retired IPS officer, highlighting the issue, with a request for judicial scrutiny. It is further not in dispute that FIR No.56 dated 11.11.2013, under Sections 379, 411 473, 468, 471, 212, 120 B IPC, 21, 22, 25, 25A, 27, 29 of the NDPS Act and 25 Arms Act at Police Station Banur, District Patiala was registered against Jagdish Singh @ Bholu who, apart from disclosures before the Enforcement Directorate, made allegations in the media regarding involvement of the petitioner in the drug racket on 11.12.2013.

As per affidavit dated 07.01.2022 of Sh. Balraj Singh, PPS Assistant Inspector General of Police, Commissioner, Bureau of Investigation-cum-Chairman, SIT, Civil Miscellaneous No.17786-CWP of 2013 was filed in CWP No. 20359 of 2013 seeking intervention in the matter by placing on record certain material relating to alleged involvement of the petitioner in the drug racket with a prayer that the matter be looked into by an independent agency. Division Bench of this court directed the Punjab Police in the month of February 2014 to file a status report regarding the investigation being conducted by the Punjab Police. In the meantime about 10 writ petitions were filed by the accused in eight (8) FIRs pertaining to the drug racket for transfer of investigation of the said cases to an independent agency/CBI. The said petitions were decided by the Division Bench of this court on 7th of October 2015, a copy whereof has been attached as Annexure P10, with this petition. The chemistry behind narcotic drugs was

detailed by the Division Bench including the misuse of licenses obtained by certain manufacturers and the alleged siphoning of the two well-known precursors of methamphetamine (ICE) i.e., pseudoephedrine and ephedrine in a clandestine manner, wherein the licit supply of these two controlled substances to drug manufacturers at a concessional rate unfortunately lands up for illicit manufacturing of narcotics. The Division Bench while holding that the petitioners in the said writ petition had failed to make out a case for a fresh investigation or reinvestigation by an independent agency, nonetheless observed as under:-

- “(i) The investigation carried out by the Punjab Police lacks scientific methodology or modern techniques necessary to nail the professional criminals like drug lords;
- (ii) There has been an apparent lack of commitment, deliberate or otherwise, in securing impeachable or impeccable evidence of independent nature;
- (iii) There are some loopholes and gaps, whether left deliberately or otherwise;
- (iv) There appears to be an indifferent and lackluster attitude on the part of senior police officers who might be comparatively well-versed with the science of narcotic drugs or psychotropic substances etc.;
- (v) There is an unexplained silence on the efforts, if any, made after the year 2013-14, to nab the organized drug traffickeers;
- (vi) No evaluation of legal, logical and long-lasting linkage between one case to another by way of credible or admissible evidence appears to have been made.”

The Division Bench proceeded to constitute a Supervisory team of three IPS officers who were directed to take stock of the situation within 3 days of receipt of a copy of the order and examine the charge-sheets already filed in each of the subject charge-sheets and revisit the issues illustratively pointed out in para 171 of the order and take necessary remedial steps. In the meantime Civil

Miscellaneous application No.15916-CWP of 2017 in CWP No.20359 of 2013 was filed regarding complicity of the petitioner. The Division Bench in respect to the application observed and directed, as under, in order dated 28th of November 2017:-

“.....At this juncture, Shri Navkiran Singh, Advocate, refers to the contents of CM No.15916-CWP-2017 in CWP No.20359-2013 and submits that the STF (Drugs) is obligated to objectively look into the allegations contained therein and apprise this Court as to whether or not there is any substance in such allegations. In this regard, he submits that the STF(Drugs) need to coordinate with Shri Niranjn Singh, Deputy Director, Directorate of Enforcement, Jalandhar and proceed on the basis of information as may be shared by the Enforcement Directorate. Shri Anupam Gupta, learned senior counsel representing Shri Niranjn Singh, Deputy Director, informs that a detailed note in a sealed cover had already been submitted in this Court by Shri Niranjn Singh on a previous occasion and the information contained therein can be shared with the Head of the STF to enable the latter to examine the veracity of the allegations levelled in the miscellaneous application. We, thus, direct the Head of STF also to specifically refer to, in his status report to be filed in this Court, the outcome of the enquiry with reference to the allegations contained in the above-mentioned application.

[8] Suffice to observe at this stage that there is no order or observations made by this Court to infer that the scope of investigation to be made by the Enforcement Directorate has been curtailed in any manner. The Law Enforcement Agencies are to proceed strictly in accordance with law in the matters within their purview.”

Mr. HS Sidhu was also asked to submit his report regarding the nexus of Raj Jit Singh, SSP with Inderjit Singh, Inspector in the context of breaking the nexus between the law enforcement agency and drug traffickers. Inspector Inderjit Singh was found involved and in collusion with drug traffickers and closely associated with Raj Jit Singh, SSP. An application was filed by Raj

Jit Singh in CWP No.20359 of 2013 to the effect that the investigation qua him in FIR No.1 dated 12/06/2017 should be conducted by an officer other than Mr. HS Sidhu, as he claimed bias. A three-member SIT headed by Mr. Chattopadhyaya was constituted by the Division Bench to look into the matter. The SIT was directed to submit its status report on 31st of January 2018.

It is borne out from the record that the Division Bench on 1st of February 2018 perused the report submitted by Mr. HS Sidhu, Head of STF and directed that a copy thereof be handed over in sealed cover to Mr. Niranjn Singh for considering the *prima facie* fact findings and proceed further in accordance with law. It is also observed that the said report requires consideration at the hands of the State Government also and a sealed copy of the report was directed to be handed over to the learned Advocate General, Punjab, Enforcement Directorate and the State Government were directed to submit their respective opinion-cum-status reports on the next date of hearing. The relevant part of order dated 1st of February 2018 passed by the Division Bench reads as under:-

“.....In deference to the directions contained in para No. 7 of order dated 28.11.2017 passed by this Court, Mr. Harpreet Singh Sidhu, Head of STF, constituted by the State of Punjab, has also submitted the status report in a sealed cover, which has been opened. The same has been perused. After going through the contents of the report, we are of the view that let a copy thereof be handed over, in a sealed cover, to Niranjn Singh, Deputy Director, Enforcement Directorate to consider the *prima facie* fact findings and proceed further in accordance with law. We are also of the view that the aforesaid report requires consideration at the hands of the State Government also for which let a sealed copy of it be handed over to learned Advocate General, Punjab. The Enforcement Directorate as well as the State Government shall submit their respective opinion-cum-status reports on the next date of hearing. The report submitted by Mr. Sidhu be also resealed and be kept in the custody of

Registrar (Judicial) of this Court.”

The Opinion-cum-Status Report of the committee constituted by the state government was filed before the Division Bench in CWP No.20359 of 2013 on 23rd of May 2018, along with a short affidavit of Dr. Nirmaljeet Singh Kalsi IAS, Additional Chief Secretary, Department of Home Affairs and Justice, Punjab. The said Opinion-cum Status Report and affidavit were taken on record and directed to be kept in the custody of Registrar (Judicial) of this Court to be produced as and when directed. The said writ petition is listed for hearing on 01.02.2022.

In the given factual background of the case, I do not find any irregularity, infirmity or illegality in the opinion rendered by the learned Advocate General, Punjab as detailed in FIR No.02 dated 20.12.2021. In my considered opinion, there is indeed no embargo or bar upon the State Government for proceeding to register FIR against the petitioner in case it has found that there is sufficient material to proceed against him. There is a specific observation by the Division Bench of this High Court that the law enforcement agencies shall proceed strictly in accordance with law in the matters within their purview. Learned counsel for the petitioner is unable to point out as to how registration of the FIR against the petitioner is not within the purview of the State agency. An argument has been raised on behalf of the petitioner that the present learned Advocate General, Punjab without having seen and without being privy to the opinion-cum-status report, first submitted on behalf of the State of Punjab before the Division Bench on 23.05.2018 alongwith the short affidavit of Dr. Nirmaljit Singh Kalsi, could not have rendered this opinion. Mr. Cheema, learned counsel has submitted that there was, in fact, no impediment in having called for the said

opinion-cum-status report submitted before the Division Bench on 23.05.2018 and thereafter giving a specific opinion. This argument is devoid of any merit for the reason that once it is found by the State authorities that there is sufficient material on record to proceed against the petitioner on the basis of the report submitted by the Head of STF, there is no question of any impediment due to a subsequent opinion-cum-status report submitted before the Division Bench, which is lying in the sealed cover. There is nothing on record to warrant non-registration of the case against the petitioner, at this stage, due to an interim order or any specific mandate of the Division Bench.

Similarly, the argument that the STF report in question had been made public and no fresh evidence had been collected by the prosecution, which justifies registration of the FIR or that colossal delay in lodging of the FIR, which is indicative of lack of any evidence, is devoid of any merit in the given factual matrix and as such does not entitle the petitioner to the concession of anticipatory bail.

It is relevant to note at this stage, that the petitioner was admittedly holding a powerful position in the State Government at the relevant time and is still admittedly, a sitting MLA. Allegations against the petitioner are of having close association and relationship with the persons, who were admittedly engaged in drug trafficking. Petitioner is alleged to have facilitated, abetted in the same, specifically by permitting use of government machinery including vehicles, security personnel and other facilities. For this purpose, reliance has been placed on the report submitted by the Head of the STF before the Division Bench of this High Court in CWP No.20359 of 2013, pursuant to specific orders passed therein. As per the said report, allegations regarding complicity of the petitioner with the

drug Mafia on the basis of the statement of the accused, Jagjit Singh Chahal, Jagdish Singh @ Bholra and Maninder Singh Aulakh @ Bittu Aulakh recorded before the Enforcement Directorate were duly looked into and all the findings per exclusively based on the record/statements provided by the Enforcement Directorate. It is to be noted that Mr. H.S.Sidhu, Head of the STF in the status report, clarified that the enquiry has been conducted in an impartial manner and he has duly disclosed that he has cousin brothers, namely, Mr. Arjun Singh Majithia and Mr. Gobind Singh Majithia sons of late Smt. Jasjit Kaur, his maternal aunt, who are further related to the petitioner. It is further declared by Mr. H.S.Sidhu that Smt. Jasjit Kaur passed away in 1987 and to the best of his knowledge he had no contact with her family for the last 14 years.

In the said status report four issues as have been detailed in the foregoing paras, were identified by the Head of the STF to enquire into the role/allegations regarding complicity of the petitioner with the drug mafia. It is specifically recorded in the status report that Satpreet Singh @ Satta, Parminder Singh @ Pindi and Amrinder Singh @ Laddi had a connection with the petitioner. Satpreet Singh @ Satta, Jagjit Singh Chahal, Maninder Singh Aulakh, Amrinder Singh @ Laddi and Parminder Singh @ Pindi were stated to be involved in offences relating to smuggling of drugs and money laundering related to profits from drugs. It is further stated that the petitioner had a role in facilitating the supply of drug of Pseudoephedrine to Satpreet Singh @ Satta and Parminder Singh @ Pindi, though it is stated that degree of support and facilitation provided by the petitioner and the consideration for such support provided, needs to be clarified by further investigation. There is a specific reference to the statement of Maninder Singh Aulakh @ Bittu Aulakh, who stated that he knew Satpreet Singh

@ Satta, a non-resident India of Canada. He further stated that Satpreet Singh @ Satta was introduced to him by the petitioner, who was the Revenue Minister with the Government of Punjab at that time (2007). Maninder Singh Aulakh further stated that Parminder Singh @ Pindi had also come to India from Canada to attend the wedding reception of the petitioner. It is further stated by him that whenever Satpreet Singh @ Satta visited India and came to Amritsar, he would stay at the residence of the petitioner from 2007 to 2010 and that the petitioner would introduce Satpreet Singh @ Satta as his friend and that Satpreet Singh @ Satta was coordinating the petitioner's election campaign of MLA from Majitha constituency. It is further stated by Maninder Singh Aulakh that Satpreet Singh was the close friend of the petitioner and used to accompany the petitioner for marriage functions, Bhogs and other cultural affairs. In 2010 Satpreet Singh is stated to have participated in an official function at Khalsa College, Amritsar to honour the Premiere of Alberta, province of Canada. Satpreet Singh was stated to be seated on the stage alongwith the petitioner and Mr. Tim Uppal, an MP from Edmonton, Canada. The petitioner is stated to have provided an Innova car, driver and gunman to Satpreet Singh @ Satta during his stay in Punjab. There is a specific reference to the statement of Jagminder Kaur wife of Maninder Singh Aulakh @ Bittu Aulakh to bring forth the proximity between the petitioner and Satpreet Singh @ Satta and Jagjit Singh Chahal etc.

It is to be noted that the Enforcement Directorate summoned the petitioner on 26.12.2014 and on being questioned regarding Satpreet Singh @ Satta, the petitioner responded by saying that in Punjabi culture, there are many by the names of Satta, Satti, Sukhi, Mukhi, Jagga, Jaggi so therefore, please ask a specific name as there can be many by the names of Satpreet Satta. However, in

the written reply to the questionnaire which was submitted by the petitioner on the same day i.e., 26.12.2014, he replied that Satpreet Singh Satta had met him alongwith Canadian Minister and MPs. His first cousin, Mr. Raj Chahal was Advisor to the then Prime Minister, Canada and he also worked as a Special Assistant to Allan Rock, the then Minister of Justice, Health and Industry, Canada. The entire family, it is stated, is known to be public figures and that is how the petitioner stated that he knew Satpreet Singh @ Satta. In response to the queries by the Enforcement Directorate regarding details of stay of Satpreet Singh, the petitioner simply stated that Satpreet Singh may have stayed with him a few times. It is stated by Maninder Singh Aulakh in a statement before Enforcement Directorate that he was introduced to Parminder Singh @ Pindi in 2009 at the wedding reception of the petitioner. He has further stated that that Jagjit Singh Chahal was dealing with Pseudoephedrine and attended meetings of Satpreet Singh @ Satta, Parminder Singh @ Pindi and that Pseudoephedrine was supplied by Jagjit Singh Chahal to Satpreet Singh @ Satta and Parminder Singh @ Pindi in Canada. Jagjit Singh Chahal stated that he met Satpreet Singh @ Satta, Parminder Singh @ Pindi, Amrinder Singh @ Laddi residents of Canada with Bittu Aulakh thrice and that these persons had come to take Pseudoephedrine and Bittu Aulakh had told him that the petitioner wanted these persons to be helped. In the status report, there is a specific reference regarding the clarification wherein it is mentioned the Enforcement Directorate recorded the statement of Jagjit Singh Chahal and on being questioned, whether the petitioner asked him to sell Pseudoephedrine worth Rs.1.5 crores to Parminder Singh @ Pindi and Satpreet Singh @Satta residents of Canada and whether he did sell the same to them, Jagjit Singh Chahal answered in the affirmative by stating,

“Majithia asked me to sell Pseudoephedrine to these people but I did not sell Pseudoephedrine to these people and we were not having quota of Pseudoephedrine at that time.” This is quoted in the status report from the extract of translated version provided by the Enforcement Directorate from the statement of Jagjit Singh Chahal dated 03.06.2014. When Jagjit Singh Chahal was questioned on 09.02.2015 as to whether he had met Satpreet Singh @ Satta, Parminder Singh @ Pindi and Amrinder Singh @ Laddi residents of Canada alongwith Maninder Singh Aulakh in India and why, he stated that these persons had come to take Pseudoephedrine and Bittu Aulakh told him that the petitioner wanted them to be helped. Details of the dispute between Satpreet Singh @ Satta and Parminder Singh @ Pindi on one side and Jagjit Singh Chahal on the other, regarding supply of pharmaceutical drug containing Pseudoephedrine is mentioned in the statement of Maninder Singh Aulakh as well as the dispute being settled with the intervention of the petitioner. There is a specific statement and averment by Jagjit Singh Chahal of handing over a sum of Rs.35 lakhs to the petitioner for the election purposes in installments.

Reference is made to an application for retraction of the statement, moved by Maninder Singh Aulakh on 14.01.2015 in the matter registered under the PML Act, 2002. It is informed by learned counsel for the State that the said application is pending before the court of competent jurisdiction and the matter under the PML Act is pending adjudication. It is asserted by learned counsel for the petitioner that the said statement has, in fact, no evidentiary value and cannot be the basis of sustaining the present FIR against the petitioner. However, in my considered opinion, this can be no use to the petitioner at this stage as the evidentiary value of the statement of Maninder Singh Aulakh @ Bittu Aulakh,

whether it can be taken into consideration or used for corroboration purposes, shall be looked into by the appropriate forum at the appropriate stage.

The question(s) raised regarding registration of fresh FIR or registration of the same without permission from the competent authority or without an order of the Division Bench of this High Court, is not strictly within the ambit of this petition or germane for adjudication of this petition seeking anticipatory bail. However, the matter is being touched upon only for the limited purpose of this bail petition. Learned counsel for the petitioner has relied upon the judgments of the Hon'ble Supreme Court in **Vinay Tyagi v. Irshad Ali @ Deepak and others, 2013 (5) SCC 762**, **Babu Bhai v. State of Gujarat and others, 2010 (12) SCC 254** and **TT Anthony v. State of Kerala and others, 2001 (6) SCC 181** to submit that registration of a second FIR is not permissible and that a fresh investigation/ reinvestigation into the matter which stands concluded is not permissible in this manner. I am, *prime facie* in agreement with the submission of learned counsel for the State that a fresh FIR in the given factual matrix is permissible for the reason that the inquiry against the petitioner involves a much larger canvass and is not restricted to the pending matters.

Learned counsel for the State has correctly relied upon judgment of the Hon'ble Supreme Court in **Nirmal Singh Kahlon v. State of Punjab and Others, 2009 (1) SCC 441**. In **Nirmal Singh Kahlon's case** (supra), the first FIR was lodged against the specific individual by referring to the acts of omission and commission of the accused named therein. The second FIR was lodged by the Central Bureau Investigation pursuant to a Public Interest Litigation before the High Court and investigation carried out thereafter in respect to the irregularities and illegalities in the appointment of Panchayat Secretaries during the tenure of

the concerned Minister (accused). The second FIR enumerated as many as 15 categories of irregularities committed by various persons involved in the said selection process. The Hon'ble Supreme Court held registration of second FIR to be valid. It is reiterated that reference in this regard is being made only for the limited purpose of this bail petition and is not a reflection on the merits of the point, which may be raised in appropriate proceedings. Therefore, this ground is not available to the petitioner for grant of anticipatory bail.

Learned counsel for the petitioner also submits that the statements recorded before the Enforcement Directorate which form the basis of the Status report, which in turn forms the edifice of the FIR are inadmissible in evidence, especially in view of the judgment of the Hon'ble Supreme Court in **Tofan Singh v. State of Tamil Nadu, 2021(4) SCC 1**. It is submitted that, in fact, there is no evidence on record for proceeding against the petitioner. However, this argument does not hold merit as the Hon'ble Supreme Court in the case of **Tofan Singh's case** (supra) has held that a statement recorded under Section 67 of the NDPS Act cannot be used in the trial of an offence under the NDPS Act. The argument raised by learned counsel for the petitioner is *prima facie* not applicable in the present case in view of Section 50(4) of the PML Act, 2002 wherein it is provided that every proceeding under sub-sections 2 and 3 of Section 50 of the Act shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. It is clarified at this stage that this argument has also been touched upon for the limited purpose of this bail application only.

Vociferous allegations have been raised on behalf of the petitioner that the FIR in question is the result of political rivalry and the State has gone to

the extent of changing officials till it got convenient ones who would toe their line. It is further contended that the timing of registration of the FIR in question is reflective of the mala-fides. The present government, it is submitted, had come in power in 2017, therefore there was no impediment in having registered the FIR much prior in time. However, I do not find that such allegations are substantiated to the extent which would persuade this Court to arrive at a conclusion that the entire official machinery is to be painted with a tainted brush, inasmuch as all of them have connived to try and implicate the petitioner in a false case. Such an averment indeed appears to be farfetched and delusionary in the given circumstances and the specific material on record.

Much stress has been laid on the opinion given by Mr. Asthana, ADGP, the then Director, Bureau of Investigation as detailed in the foregoing paras. It is brought to my notice by learned counsel for the State that the said officer had expressed a different view on 10.12.2021 and had thereafter expressed his reservations and formulated the questions on 11.12.2021 itself, seeking further legal examination of the matter, despite the learned Advocate General, Punjab already having given his opinion on the matter on 01.12.2021. Without commenting upon the manner in which the opinion has been given by the said officer after the legal opinion tendered by the learned Advocate General, Punjab, I am of the considered opinion that the allegations of *mala fides* and political rivalry are not considered to be substantial enough, keeping in view the allegations raised against the petitioner, to be a ground to afford anticipatory bail to him. It cannot be denied that the petitioner indeed was at the helm of affairs at the time of occurrence of alleged offence(s). He was admittedly a Cabinet Minister for some part of the time and was admittedly closely related to then

Deputy Chief Minister of the State, besides, a Member of Parliament, of the Central Government. Merely on the ground that no action was taken by the State government for these long years, the petitioner is not entitled to relief in this petition. The report in question was duly handed over to the State, therefore, in case delay has occurred due to tardiness of the state machinery for any reasons, whatsoever, the same cannot provide a sufficient ground to the petitioner for grant of anticipatory bail in this matter. It is pertinent to note that way back on 07.10.2015 while disposing of CWP No.88 of 2014 it was observed by the Division Bench of this Court that there appears to be an apparent lack of commitment, deliberate or otherwise, in securing impeccable evidence of independent nature and that there is an unexplained silence on the efforts being made after years 2013-2014 to nab the organized drug traffickers. It is relevant to note at this stage that in the opinion of the learned Advocate General, Punjab laxity on the part of the State is duly admitted. Be that as it may, in case an effort is now being made by the State to break the nexus between the State machinery and the drug traffickers, I find no ground to scuttle the same at this stage.

It is further relevant to note that in this political slug fest, complete and thorough investigation should not be the casualty, especially keeping in view the grave and serious charges leveled under the NDPS Act. The matter indeed calls for in-depth investigation without being coloured by political overtones.

Moreover, grant of anticipatory bail is not an exercise in routine. It is well settled that there can be no hard and fast rules for the grant or otherwise of anticipatory bail. The Hon'ble Supreme Court in the celebrated case of **Gurbaksh Singh Sibia v. State of Punjab, (1980) 2 SCC 565** while dealing with the parameters to be considered for grant or otherwise of anticipatory bail,

observed as under:-

“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.

32. A word of caution may perhaps be necessary in the evaluation of the consideration whether the applicant is likely to abscond. There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it.”

In Siddharam Satlingappa Mhetre v. State of Maharashtra and

others, (2011) 1 SCC 694, it has been observed by the Hon'ble Supreme Court as under:-

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences;
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the

complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

The Hon'ble Supreme Court in its decision dated 05.09.2019 in Criminal Appeal No.1340 of 2019 (P.Chidambaram v. Directorate of Enforcement), arising out of SLP(Crl.) No.7523 of 2019 observed as under:-

“67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

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73. Observing that the arrest is a part of the investigation intended to secure several purposes, in *Adri Dharan Das v. State of W.B. (2005)* 4 SCC 303, it was held as under:-

“19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the

connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.”

74. In *Siddharam Satlingappa Mhetre v. State of Maharashtra and Others* (2011) 1 SCC 694, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

75. After referring to *Siddharam Satlingappa Mhetre* and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in *Jai Prakash Singh v. State of Bihar and another* (2012) 4 SCC 379, the Supreme Court held as under:-

“19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See *D.K. Ganesh Babu v. P.T. Manokaran* (2007) 4 SCC 434, *State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain* (2008) 1 SCC 213 and *Union*

of India v. Padam Narain Aggarwal (2008) 13 SCC 305.)”

Reference can also be made usefully, to the judgment of the Hon’ble Supreme Court in State rep. by CBI v. Anil Sharma, (1997) 7 SCC 187, which reads 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 ensconded with a favourable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he 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 task of disinterring offences would not conduct themselves as offenders.”

It is thus clear that the Court will ordinarily not interfere with the investigation of a crime and with arrest of the accused in a cognizable offence. Anticipatory bail is not be granted as a matter of rule and is to be afforded only when exceptional circumstances have been set forth to justify the same.

It has been vehemently argued that the petitioner has joined investigation pursuant to interim order dated 10.01.2022 passed in this petition and has cooperated fully with the Investigating Agency, though this fact has been denied and opposed by learned counsel for the State, who has argued that the petitioner was non-cooperative and has refused to handover the photographs/videos of his wedding which are necessary in view of the allegations of the co-accused having close relations with the petitioner and some of them

having been introduced to each other on the said occasion. Learned counsel for the State further submitted that the petitioner in fact gave evasive replies by terming the question to be outrageous and claiming some matters to be personal. Learned counsel for the petitioner has circulated a short note on behalf of the petitioner with regard to the joining of investigation by him and has also filed an application to place on record the notice(s) issued to the petitioner by the Investigating Agency and the replies given by him to the written questionnaire. I have perused the note circulated on behalf of the petitioner wherein it is stated that he found some of the questions to be unwarranted, offensive, unnecessary, with the Investigating Agency needlessly going around in circles and trying to enlarge the scope of investigation beyond reasonable limits and not addressing itself to the allegations in the FIR. The questions alongwith the answers, given by the petitioner, have been perused. However, I do not deem it appropriate to go into the details into the same or express any opinion thereon lest there be prejudice to any side, except to conclude the State has successfully made out a case of custodial interrogation of the petitioner in the face of the conduct of the petitioner.

Reference to interim order passed in this petition granting interim bail to the petitioner is of no avail for the reason that the same is just an “interim order”. An opportunity was provided to the petitioner to join investigation and fully cooperate with the Investigating Agency. At this stage, it is relevant to note that a box allegedly containing photo album and videos of the petitioner’s marriage were sought to be placed before this Court today. It is to be noted that in the answers to the questionnaire the petitioner has stated that the said photo album etc. has been misplaced. However today, learned counsel for the petitioner

has submitted that the petitioner wishes and desires that the said photographs be placed before the Court or the petitioner is ready and willing to present the same only before the Inspector General of Police or the Director General of Police, Punjab himself and not before the Investigating Officer. This manner and conduct of the petitioner lends credence to the assertion of learned counsel for the State that the petitioner has not extended full cooperation to the Investigating Agency.

Another important aspect of the matter, which needs to be considered, is the rigours of Section 37 of the NDPS Act. Section 37 of the NDPS Act, reads as under:-

“37. **Offences to be cognizable and non-bailable.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

Learned counsel for the State has referred to the decision of the Hon'ble Supreme Court in **Satpal Singh v. State of Punjab, (2018) 13 SCC 813** wherein it is specifically held that the limitations contained under Section 37 of the NDPS Act are in addition to those prescribed under the Code of Criminal Procedure, which includes Section 438 Cr.P.C. Decision in **Satpal Singh's case**

(supra) was overruled in decision of Sushila Aggarwal v. NCT of Delhi, (2020) 5 SCC 1 to the extent of the tenure of the anticipatory bail. It was held in the case of Sushila Aggarwal (supra) that anticipatory bail would enure during the pendency of the trial as opposed to the decision in Satpal Singh's case (supra). However, as correctly pointed by learned counsel for the State, the decision regarding applicability of Section 37 of the NDPS Act in the case of anticipatory bail has not been overruled. In this respect, it is useful to refer to the judgment of the Hon'ble Supreme Court in Narcotics Control Bureau v. Kishan Lal and others, (1991) 1 SCC 705 wherein it is specifically held that the power to grant bail under *any of the provisions of Code of Criminal Procedure* should necessarily be subject to the conditions mentioned in Section 37 of the NDPS Act, which start with a non-obstante clause. Though learned counsel for the petitioner has sought to argue on the basis of the judgment of the Hon'ble Supreme Court in Nikesh Tarachand Shah v. Union of India and another, (2018) 11 SCC 1 that rigours of Section 37 of the NDPS are not applicable qua grant of anticipatory bail. In my considered opinion the argument does not hold weight especially in view of order dated 04.01.2022 of the Hon'ble Supreme Court in Criminal Appeal No.21 of 2022 arising out of SLP (Crl.) No.8441 of 2021, titled 'Assistant Director, Enforcement Directorate v. Dr. VC Mohan', wherein the matter had remanded to the High Court. In this case the High Court considered the anticipatory bail to an accused in connection with an offence under the PML Act, 2002 as if it was dealing with the prayer for anticipatory bail in an ordinary offence under the Indian Penal Code. It was observed by the Hon'ble Supreme Court as under:-

“...Indeed, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian

Penal Code. That does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play.”

It is further explained in respect to the dictum of the Hon'ble Supreme Court in Nikesh Tarachand Shah's case (supra) that the observations made therein appear to have been misunderstood as it is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigours of Section 45 of the PMLA Act must get triggered - although the application is under Section 438 of Code of Criminal Procedure.

In the alternate, it is argued that even if Section 37 of the NDPS Act is found applicable, the conditions mentioned therein are duly met with as the standard prescribed for grant of bail is a reasonable ground to believe that the person is not guilty of the offence and the court is not to consider the matter as it were pronouncing the judgment of acquittal. Reference was made to the judgment of the Hon'ble Supreme Court in Union of India v. Md. Nawaz Khan, (2021) 10 SCC 100 wherein it is observed as under:-

“22. The standard prescribed for the grant of bail is ‘reasonable ground to believe’ that the person is not guilty of the offence. Interpreting the standard of ‘reasonable grounds to believe’, a two-judge Bench of this Court in Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798 held that:

“7. The expression used in Section 37(1)(b)(ii) is “reasonable grounds”. The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of

satisfaction that the accused is not guilty of the offence charged.

8. The word “reasonable” has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7. ... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

10. The word “reasonable” signifies “in accordance with reason”. In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See *Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.* [(2003) 6 SCC 315])

11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

(emphasis supplied)

23. Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug-trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed.”

The Hon’ble Supreme Court in **State of Kerala and others v.**

Rajesh and others, (2020) 12 SCC 122 has held that “the expression reasonable grounds means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify

satisfaction that the accused is not guilty of the alleged offence". It is held by the Hon'ble Supreme Court that in case either of the two provisions as contained in Section 37 of the NDPS Act are not satisfied, the ban for granting bail operates.

Keeping in view the facts and circumstances, I am unable to record the satisfaction as is required to be recorded under Section 37 of the NDPS Act, at this stage, where the investigation is admittedly at a nascent stage.

Thus, keeping in view the facts and circumstances as above, I do not find any ground to afford the concession of anticipatory bail to the petitioner.

This petition is, accordingly, dismissed.

Pending applications, if any, are disposed of accordingly.

At this stage, learned counsel for the petitioner submits that keeping in view the fact that assembly election has been declared in the State of Punjab, one week may be afforded to the petitioner to avail his remedy and in the meanwhile, he be protected for this period.

Keeping in view the peculiar circumstances of this case, which are apparent from the detailed discussion as above while not finding any ground to afford one week as prayed for, petitioner is afforded three days to enable him to approach the Hon'ble Supreme Court for challenging this order. Till then, petitioner be not arrested.

It is made clear that this protection shall enure only for three days from today.

January 24 , 2022.
'om'

(LISA GILL)
JUDGE

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