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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-20639-2021(O&M)

Date of decision:-01.09.2021

Lovepreet Singh @ Luvi

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Vipul Jindal, Advocate  
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

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**H.S. MADAAN, J.**

Case taken up through video conferencing.

1. This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Lovepreet Singh @ Luvi, aged 28 years, resident of Narang Ke Syal near Dairy Military Area, Ferozpur Cantt., an accused in FIR No.33 dated 6.4.2021, under Section 21 of NDPS Act, 1985, registered with Police Station Sadar, Moga.

2. Briefly stated, the facts of the case as per the prosecution story, are that on 6.4.2021, a police party from Police Station Sadar, Moga headed by ASI Virender Singh was present at Railway Crossing, Dagra when it received a secret information that Sukhjinder Singh @ Sukha son of Harbhajan Singh, resident of Ferozpur and Lovepreet Singh @ Luvi

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(present petitioner) were coming towards Moga from Ferozepur in a Innova Car bearing registration No.PB29M-0600 belonging to Sukhjinder Singh @ Sukha, to deliver huge quantity of heroin. Finding the information to be reliable, ASI Virender Singh sent ruqa to Police Station Sadar, Moga, on the basis of which formal FIR was registered. In the meanwhile ASI Malkiat Singh had reached at the spot and he relieved ASI Virender Singh, then the police party laid a NAKA and intercepted the Innova car coming from Ferozepur side. On being inquired, the driver of the car disclosed his name as Sukhjinder Singh @ Sukha. The Innova car was searched. The personal search of Sukhjinder Singh @ Sukha was conducted and Sukhjinder Singh @ Sukha was found to have tied a cloth of yellow colour around his waist. On being checked, it was found to have heroin wrapped in a plastic polythene. The quantity of recovered heroin was found to be 800 gms. The recovered contraband was seized. Accused Sukhjinder Singh @ Sukha was arrested in this case. Innova car bearing registration No.PB29M-0600 was taken into police possession since Sukhjinder Singh @ Sukha could not produce any documents with regard to ownership of the said car. During the course of his interrogation, Sukhjinder Singh @ Sukha disclosed that petitioner/accused Lovepreet Singh @ Luvi had handed over the said heroin to him directing him to take the consignment to Moga and then to contact him, however, on the way Sukhjinder Singh @ Sukha had been arrested by the police.

3. After being nominated in this case, apprehending his arrest, the present petitioner had approached the Court of Sessions at Moga seeking grant of pre-arrest bail by filing an application, which was

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assigned to Judge, Special Court, Moga. However, his such application was dismissed by the said Court vide detailed order dated 22.4.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief, which request is being opposed by the State counsel.

4. I have heard learned counsel for the parties besides going through the records.

5. The first and foremost argument advanced by learned counsel for the petitioner was that the petitioner was named by his co-accused Sukhjinder Singh @ Sukha in his disclosure statement made to the police; such statement is hit by Section 25 of the Evidence Act and cannot be taken into consideration; there is no other evidence available on record to show that petitioner/accused has committed any offence, therefore, no prima facie case is made out against the petitioner/accused.

6. Whereas, this argument has been controverted by the State counsel contending that petitioner is specifically named in the FIR and it is erroneous to say that his name cropped up in the disclosure statement of co-accused only.

7. After hearing the rival contentions, I find that the petitioner is specifically named in the FIR and it is not a case where he was nominated as supplier of the contraband by Sukhjinder Singh @ Sukha for the first time in the statement made by him to the police.

8. Even otherwise, Section 30 of the Indian Evidence Act provides that when more person than one are being tried jointly for the same offence, and a confession made by one of such persons affecting

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himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

9. Though this provision relates to value to be attached to such statement of co-accused implicating himself as well as another person during the trial but then at the stage of pre-trial say investigation and while deciding the question as to whether petitioner/accused is entitled to grant of pre-arrest bail or not, such statement can certainly be taken into consideration for providing lead in the investigation.

10. Another argument advanced by learned counsel for the petitioner was that the FIR was registered on the basis of secret information, which was required to be reduced into writing in terms of Section 42(2) of the NDPS Act and then a copy thereof was required to be sent to the superior officer. However, this was not so done in the present case adversely affecting the credibility of the prosecution story.

11. Learned State counsel, however, has controverted such contention stating that the secret information was received by ASI Virender Singh, while he along with other members of the police party was present at Railway Crossing, Dagru in connection with official duties and since he was not in the police station and the information received required taking of immediate action as delay would have resulted in the police might not be able to nab the accused with contraband, as such the police party proceeded to the spot, where accused Sukhjinder Singh @ Sukha and petitioner Lovepreet Singh @ Luvi were expected to come in Innova car, therefore, in view of emergent situation, such compliance

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could not be made. In support of that contention, he has referred to judgment *Sajan Abraham Versus State of Kerala, 2001(3) RCR (Criminal) 808* wherein the Apex Court had observed that when in a case under NDPS Act, relating to recovery of the contraband on receipt of information by the Investigating Officer, which is neither reduced into writing nor conveyed to senior officer due to the fact that delay would result in escape of accused, the prosecution case cannot be thrown out due to non-compliance of mandatory provision of Section 42 in such a situation. It was further observed that the Court while construing such provisions strictly should not interpret it so literally so as to render its compliance, impossible and further in case if the following of mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then prosecution case should not be thrown out.

12. I find that the explanation rendered by the State counsel is quite convincing and plausible and in view of judgment *Sajan Abraham Versus State of Kerala*(supra) referred to by him non-compliance of Section 42 of the Act in this case does not have any adverse effect on the prosecution case.

13. Learned counsel for the petitioner has referred to various judgments in support of his arguments first judgment being *Darshan Singh Versus State of Haryana*, passed by Hon'ble Supreme Court in Criminal Appeal Nos.216 and 217, wherein the Apex Court dealing with a case under NDPS Act, where on receipt of secret information SHO of police station had conducted raid and had recovered contraband but mandate of Section 42 was not followed, it was observed that registration

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of FIR as also the communication of the FIR to the Superintendent of Police would not constitute an effective compliance of the provisions contained in Section 42 of the Act, as such conviction recorded by Courts below was set aside.

14. At the very outset, it may be stated that the facts of the case were quite different wherein SHO of the police station had received a secret information with regard to a person in possession of contraband present in his house and thereafter raid had been conducted. It could be said that he had adequate time to record the information in writing and then send a copy to his superior officer. Here it was not so because if the police could not intercept the Innova car in question, the accused would have escaped along with the contraband and there was not sufficient time available to comply with the requirement of Section 42(2) of the Act. Furthermore, the observations had been made on merits of the case, when the accused had been convicted by the Courts below in light of the evidence adduced during the trial where yardstick used to determine the guilt of the accused is that prosecution must prove its case against the accused beyond a shadow of reasonable doubt and onus to prove guilt of the accused to the hilt is stationary on the prosecution and it never shifts. The accused may keep mum throughout the trial and even then he may be acquitted if the prosecution fails in its endeavour to bring home guilt of the accused conclusively and affirmatively. Furthermore, during the trial, the non-compliance of various provisions and effect thereof is given due weightage, whereas here the question to be determined is whether petitioner is entitled to grant of pre-arrest bail or not. The factors, which

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are to be taken into consideration to determine such entitlement of petitioner/accused to the relief are quite distinct and different. The Apex Court in its judgment *Shobhan Singh Khanka Versus State of Jharkhand, 2012(2)RCR(Criminal) 535*, had enumerated those factors, which are as under:

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he 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; and
- (iv) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.

15. Examining the instant case on touchstone of factors enumerated above, the petitioner does not deserve concession of pre-arrest bail. The allegations against the petitioner are quite grave and serious of indulging in drug trafficking. The apprehension expressed by the State counsel that keeping in view the seriousness of allegations, there is likelihood of the petitioner absconding and in the process prolonging the trial cannot be brushed aside lightly. There is nothing to suggest that petitioner has been involved in a false case just to harass and humiliate him.

16. During the present proceedings, the Court is not required to go into the merits of the case in depth and main thing to be seen is the allegations as per the prosecution version besides the other requisite

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ingredients to find out whether the petitioner deserves or does not deserve grant of discretionary equitable relief of pre-arrest bail.

17. The next judgment pressed into service by learned counsel for the petitioner was **State of Rajasthan Versus Jag Raj Singh @ Hansa** delivered by Hon'ble Supreme Court in Criminal Appeal No.1233 of 2006. Again the observations were made in the judgment while hearing appeal against judgment of High Court acquitting the accused of the charge under Sections 8/15 of NDPS Act, 1985, whereas the judgment of conviction and sentence passed by Special Judge (NDPS Cases), Hanumangarh had been set aside. In the judgment, it had been observed that non-compliance of Sections 42 and 50 of the Act may not vitiate the trial but that would render the recovery of illicit articles suspect and vitiate the conviction and sentence of accused.

18. Again this judgment cannot come to the rescue of the petitioner. In the present proceedings, this Court is not to determine the guilt of the accused when as per the observations made by the Apex Court, non-compliance with Sections 42 and 50 of the Act may not vitiate the trial then that means such violation if found to be there would effect the conviction and sentence of the accused. But that may not be of much significance while deciding petition for grant of pre-arrest bail of an accused.

19. Another judgment referred to by learned counsel for the petitioner was **Boota Singh & Others Versus State of Haryana** passed by Hon'ble Supreme Court in Criminal Appeal No.421 of 2021. This judgment had been also given on merits of the case and such observations

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have not much bearing while deciding the present petition.

20. One more judgment referred to by learned counsel for the petitioner was *Sarija Banu (A) Janarthani alias Janani and another Versus State through Inspector of Police* passed by Hon'ble Supreme Court in Criminal Appeal No.302 of 2004. That case had different facts. It was established on record that a police party had illegally entered into the house occupied by the appellants and taken them into custody. A telegram in that regard had been sent to Commissioner of Police and other police officers. The sending of that telegram and receipt thereof was not disputed, therefore the prosecution story was found to be suspicious coupled with the fact that there was violation of Section 42 of the NDPS Act. The petitioner was ordered to be released on bail. It was not only on account of non-compliance of Section 42 of the Act that the bail application had been accepted.

21. Learned counsel for the petitioner has further relied upon judgment *Ram Prasad Khandwal Versus The State of Bihar* passed by Hon'ble Supreme Court in Criminal Appeal No.1926 of 2014. That judgment had different facts inasmuch as while hearing criminal appeal against conviction and sentence passed by the trial Court and affirmed by the High Court, the Apex Court had accepted the appeal and acquitted the accused giving him benefit of doubt. As per the prosecution version appellant/accused was found travelling along with his co-accused Ramesh Chandra Thakur and both were found sitting on a black iron box from which Ganja was recovered. The keys of the box and VIP suitcase were found in possession of other accused Ramesh Chandra Thakur and not

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with the appellant. Observing that merely because the appellant was sitting along with the other accused on the box, it cannot be conclusively said that appellant shared any object of transporting the ganja along with the other accused, namely Ramesh Chandra Thakur.

22. Here the situation is entirely different. The petitioner is specifically named in the FIR, though he was not found travelling in the Innova car along with co-accused Sukhjinder Singh @ Sukha. We are not determining his criminal liability in these proceedings, rather trying to find whether he is entitled to grant of anticipatory bail or not. Therefore, this judgment does not help the petitioner.

23. Learned counsel for the petitioner again referred to a judgment *Haricharan Kurmi Versus State of Bihar* passed by Hon'ble Supreme Court in Criminal Appeals No.208 and 209 of 1963, wherein it was observed that confession of co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion. This judgment was also on the merits of the case to determine guilt of an accused where it is not so here. It is for the trial Court to see as to how much weightage is to be given to confessional statement of the co-accused under Section 30 of the Evidence Act.

24. Furthermore, as discussed earlier the petitioner has been named not only in confessional statement of co-accused but his name was already mentioned in the FIR that he along with his co-accused Sukhinder Singh @ Sukha are habitual of selling heroin in huge quantity and both of

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them were coming to Moga in Innova car on that date to deliver huge quantity of heroin. Therefore, this judgment is of no help to the petitioner.

25. One more judgment relied upon by learned counsel for the petitioner was ***Dharamveer & Anr. Versus State of Punjab*** passed by a Division Bench of this Court in CRM-M-25433-2015. As per the facts of that judgment, on the fateful day, the police on receipt of secret information that Tarsem Singh along with one Dalbir Singh @ Gullu were dealing in sale of heroin at large scale and were going for supply of heroin towards Lambra on a Scooty and Pulsar motorcycle and on the basis of such information, FIR was registered. The police had laid a NAKA and intercepted Tarsem Singh Dalbir Singh while they were going on scooty. On search being conducted, 500 gms heroin was recovered from each one of them. During the interrogation, Tarsem Singh disclosed that Sandeep Singh and Dharamveer were present near Rampur Lallian Chowk along with cash amount of Rs.70,000/- for purchase of the recovered heroin. As such both of them were arrested and Rs.70,000/- were recovered from them. Observing that Sandeep Singh and Dharamveer had been implicated on the basis of alleged disclosure statement made by co-accused Tarsem Singh and no contraband had been recovered from them except cash amount of Rs.70,000/-, it was observed that in absence of any recovery of any contraband, Section 37(1)(b)(ii) of the NDPS Act was not attracted and there was no allegation that petitioner used to purchase heroin for further supply or re-sale as members of any gang.

26. It may be mentioned here that there were several factors, which were taken into consideration while granting regular bail to the

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accused in that case and the observation that in absence of any recovery of contraband Section 37(1)(b)(ii) of NDPS Act is not attracted was in light of such circumstances and not in isolation. Therefore, it cannot be said that in every case under NDPS Act when recovery is not effected from a person, accused of drug peddling Section 37 of the Act would not be applicable.

27. Most of the times, the persons running the drug cartels do not retain possession of the contraband, rather they keep themselves at a safe distance getting the drug peddling done through small time criminals, drug addicts, poor persons etc. In Section 37 of the Act, the language does not suggest that the possession of the contraband by a person is necessary to attract rigors of Section 37 of the Act.

28. In *Ragini Dwivedi @ Gini @ Rags Versus The State of Karnataka*, Criminal Appeal No.62 of 2021, Special Leave Petition (Crl.) No.5998 of 2020, the Hon'ble Apex Court had noticed as under:

- i) that pursuant to the search made of the appellant's premises, no drugs at all were found;
- ii) that the entirety of the case of the appellant is based upon the statement made by B.K. Ravishankar and the case diary and at the highest, it could possibly be said that the appellant consumed certain drugs at parties; and
- iii) What is important to note is that the appellant has been arrested also on a conspiracy charge, which the High Court itself found to be tenous, saying the said charge needs to be proved at the trial. It is also noted that till date, no chargesheet has been filed.

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The Apex Court came to the conclusion that Section 37 of NDPS Act was wrongly invoked by the Courts below.

Here the facts of the case are quite different and observations made do not come to rescue of the present petitioner.

29. Similarly, the other judgments referred to by learned counsel for the petitioner i.e. *Seesh Singh @ Mor Versus State of Punjab* passed by Hon'ble Apex Court in Criminal Appeal No.822 of 2020 arising out of SLP(Cri.) Nos.4520/2020, *Piara Singh Versus State of Punjab* passed by a Coordinate Bench of this Court in CRM-M-55799-2018, *Gurjit Singh Versus State of Punjab* passed by this Court in CRM-M-13378-2020, *Honey @ Mehar Khan Versus State of Punjab* passed by this Court in CRM-M-16452 of 2020 and *Prateek Jain Versus State of U.P. and two others*, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

30. It has been noticed that only small time carriers get caught by the police. Several factors are responsible for the flourishing of the drug racket. In some cases political patronage is provided to the drug peddlers, with the result the police turn blind eye to their activities. On occasions when such peddlers get involved in cases under the Act, they manage to escape arrest and punishment by exercising their influence with the investigation and law enforcement agencies making use of lacunae in enforcement of law. Such type of drug peddlers are careful enough not to carry contraband themselves, rather use poor persons most of them, are drug addicts, for the purpose of transportation of the drugs and delivery to

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the consumers. When some carrier is caught and takes name of the supplier before the police, such supplier by getting best legal assistance by taking advantage of loopholes in the system manage to escape putting up a straight-face denying his involvement in drug peddling coming up with a plea that statement of co-accused is inadmissible in evidence against him. Such type of pleas are accepted many a times resultantly it becomes next to impossible to trace the hierarchy in the drug racket and except for small time carriers, the persons actively involved in the drug racket, the suppliers and the controller at the top do not even get identified or detected. When on a few occasions investigating agency tries to make little progress in the investigation by going a step further towards the culprits after interrogation of the carrier, proceedings in most of the cases come to halt there since such persons do not join custodial interrogation and manage to evade arrest. Although when they join investigation couched in comparative safety of pre-arrest bail, they simply deny their involvement in the racket. The investigating agency cannot do much in the matter. It is normal human nature not to say anything, which may harm that person. No person not even of average intelligence, involved in drug trafficking would admit his involvement what to talk of providing further lead about the person(s) from whom he had been procuring the contraband and the persons to whom he had been supplying, the money earned from such activities and the investment thereof etc. The custodial interrogation is definitely elicitation oriented but with investigating agency getting little opportunity to have custodial interrogation of the supplier and other persons connected with drug trafficking, police cannot

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reach the big fish running the drug racket.

31. In judgment **P. Chidambaram Versus Directorate of Enforcement** passed in Criminal Appeal No.1340 of 2019 arising out of SLP(Crl.) No.7523 of 2019 Hon'ble Apex Court in para Nos.60, 63, 67, 69, 70 and 81 observed as under:

60. *The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 Cr.P.C., the Court can interfere and issue appropriate direction only when the Court is convinced that the power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of Criminal Procedure Code.*

63. *Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In State of Bihar and another v. P.P. Sharma, IAS and another 1992 Supp. (1) 222, it was held that “The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order.*

.....Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...”. In *Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria* (1998) 1 SCC 52, this Court held that “.....it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual.”

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.*

69. Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedure prescribed by law. However, the power conferred by Article 21 of the Constitution of India is not unfettered and is qualified by the later part of the Article i.e. "...except according to a procedure prescribed by law." In State of M.P. and another v. Ram Kishna Balothia and another (1995) 3 SCC 221, the Supreme Court held that the right of anticipatory bail is not a part of Article 21 of the Constitution of India and held as under:-

"7. ....We find it difficult to accept the contention that Section 438 of the Code of Criminal Procedure is an integral part of Article 21. In the first place, there was no provision similar to Section 438 in the old Criminal Procedure Code. The Law Commission in its 41st Report recommended introduction of a provision for grant of anticipatory bail. It observed: "We agree that this would be a useful advantage. Though we must add that it is in very exceptional cases that such power should be exercised." In the light of this recommendation, Section 438 was incorporated, for the first time, in the Criminal Procedure Code of 1973. Looking to the cautious recommendation of the Law Commission, the power to grant anticipatory bail is conferred only on a Court of Session or the High Court. Also, anticipatory bail cannot be granted as a matter of right. It is essentially a statutory right conferred long after the coming into force of the Constitution. It cannot be considered as an essential ingredient of Article 21 of the Constitution. And its non-application to a certain special category of offences cannot be considered as violative of Article 21." [underlining added]

70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility

*of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under [Article 21](#) of the Constitution of India.*

*81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.*

32. In judgment **Jai Prakash Singh Versus State of Bihar and another etc., 2012(2) RCR(Criminal)251**, it was observed that neither anticipatory bail nor regular bail can be granted as a matter of rule and the anticipatory bail being an extraordinary privilege should be granted only

in exceptional cases. While dealing with parameters to be considered while considering application for anticipatory bail as laid down in 2011(1) RCR(Crl.) 126 were reiterated as follows:

*(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, 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.*

*(xi) The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.*

*(xii) The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.*

33. Thus considering the grave and serious allegations against the petitioner, he being specifically named in the FIR, the quantity of contraband recovered from his co-accused, the custodial interrogation of the petitioner is necessary for complete and effective investigation. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for, since the investigation would be curtailed to a great extent and the investigating agency would not be able to reach the bottom of the things to find out the material facts and then to act against the persons running the drug racket in order to curb the alarming extent of drug abuse and drug addiction amongst the people of the State.

34. In case of ***State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case

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like this interrogation of suspected person is of tremendous advantage in getting useful informations.

35. Therefore, the facts and circumstances of the case do not call for acceptance of the petition. The same is doomed for failure and is dismissed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

01.09.2021

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**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**

**(H.S.MADAAN)**

**JUDGE**



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