

**IN THE COURT OF PARMINDER SINGH RAI,
JUDGE, SPECIAL COURT, GURDASPUR**

CIS No. BA/1786/2023
CNR No. PBGD01-004537-2023
Date of Decision: 02/06/2023

Rishi Khanna s/o Mohinder Khanna, r/o 284, RB Estate, Loharka
Road, Amritsar

.....Petitioner.

Vs.

State of Punjab

.....Respondent

FIR No.50 dated 24.05.2022
Under Sections 22, 29,32,35 of NDPS Act
Police Station:- Fatehgarh Churian

Second bail application under Section 438 Cr.P.C.

Present: Sh. Davesh Kalsi, Advocate, counsel petitioner
Sh. Kiran Kumar, Ld. Addl. P.P for the State.

ORDER

1. Present petition has been filed by petitioner seeking pre-arrest bail under Section 438 of Cr.P.C. for the alleged commission of offences as mentioned above.
2. Upon notice, learned Additional P. P. put in appearance and contested the bail application. Police record was also requisitioned.
3. It is submitted by the leaned counsel for the accused that accused has just been nominated in the present case only for the

reason of alleged confessional statement by co-accused Kuldeep Singh and Bhupinder Singh which is hit by Section 25 of the Indian Evidence Act. Even he contends that applicant has been licensed chemist and is running a chemist shop under the name and style of M/s Ganpati Agencies Amritsar. Recovery has already been effected. No custodial interrogation of accused is required. Nothing is to be recovered from the petitioner. Petitioner is ready to join the investigation. At the end, learned counsel for the petitioner prayed that the petitioner may be admitted to pre-arrest bail.

4. On the other hand, it is submitted by learned Addl. P. P. that the allegations against the petitioner are serious in nature. The custodial interrogation of petitioner is required for further investigation of the present FIR, as such, present bail application may be dismissed.

5. I have considered the rival contentions of learned counsel for petitioner as well as of learned Additional Public Prosecutor and perused the record.

6. As per contents of the FIR, on 24.05.2022, one secret information was received that Bhupinder Singh is habitual of selling intoxicant substance and now he is going to his village side after procuring the intoxicant substance from Fatehgarh Churrian Medical store. On the basis of suspicion Bhupinder Singh was arrested and from him 100 intoxicant tablets were recovered. During

interrogation, Bhupinder Singh disclosed to have procured the said contraband from Kuldip Singh Medical Store, Fatehgarh Churian and on his disclosure, the police party alongwith drugs Inspector raided the medical store of accused Kuldip Singh and 1990 intoxicant tablets in one closed box were recovered and further 43 intoxicant tablets of Pentadol have been recovered. The drugs money of Rs. 17260/- was also recovered. During further interrogation, accused disclosed that above contraband was supplied to him by applicant Rishi Khanna who was nominated in the present case under Section 29 of the NDPS Act.

7. It has been held by the Hon'ble Supreme Court India in case titled as **State of Haryana vs. Samarth Kumar reported as 2022(3) RCR (Criminal) 991** where question as to whether the concession of dictum of law laid down in case Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC can be considered at the time of consideration of pre-arrest bail came up before the Hon'ble Supreme Court of India and the relevant observations by Hon'ble Supreme Court of India is as under:-

viii) In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

xi) The grant of anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view

that the High Court fell into an error in granting anticipatory bail to the respondents.

8. After relying upon the aforesaid decisions of the Hon'ble Supreme Court of India, the Hon'ble Punjab and Haryana High Court in case titled **Jaskaranjit Singh @ Bath Vs. Narcotics Control Bureau, CRM-M-58768-2022 decided on 21.12.2022** has held in connection with grant of anticipatory bail and it has been observed which is as under:-

“The sole ground taken by the petitioner for grant of anticipatory bail in view of the judgment in the case of Tofan Singh (supra) that the disclosure statement of co-accused is inadmissible, has no force, as per the law laid down by Hon'ble The Supreme Court of India in the cases of Prabhulal and Samarth Kumar (supra). Thus, the allegations against the petitioner call for a deeper probe, to unearth the modus operandi, source of origin, chain of supply and find out the involvement of other persons therein, so as to also eradicate the menace of drug proliferating, for which the custodial interrogation of the petitioner is required. The grant of pre-arrest bail in the present case shall be detrimental to the investigation. The stringent provisions as contained in the statute, are to deal with the drug menace, plaguing the society, as the youth are being led on a path having deleterious effects, thereby destroying the very social fabric. Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed”

9. This is the second pre-arrest bail application on behalf of accused-applicant as the first pre-arrest bail has been dismissed by this court vide order dated 15.04.2023. Accused-applicant has been nominated on the basis of confessional statement of accused Kuldip Singh as per which it was accused-applicant only who used to supply

them said contraband. The co-accused Kuldip Singh and Bhupinder Singh were only granted interim bail, subject to outcome of final result of chemical examination regarding salt and its quantity. It has been contended that accused has just been named on the disclosure statement and he is ready to join the investigation even. In the matter of present case, the investigation is at earlier stages and police may be able to collect some more independent corroborative and affirmative legal evidence which can only be done in case the custodial interrogation of the accused-applicant is conducted. The menace of drugs is all prevalent these days and it needs to be dealt with stern hands and measures as said menace is eating into the vitals of the society. Police has to unearth the total facts as to how the applicant even got the said substance and even to unearth the whole network of drugs supply. For effective investigation and specifically for offence under NDPS Act in the circumstances, the custodial interrogation thus would be essentially required. The lives of citizen would be at stake as there is alarming spike in number of people addicted to these drugs and the same needs to be curbed in an effective manner. No ground is made out to grant pre-arrest bail to accused-applicant at this stage.

10. In light of aforesaid case law, the bail application is hereby dismissed. However, any observations made above shall not be construed as an impression on the merits of the case. A copy of

this order be attached with remand papers. Record of present bail application be consigned to record room.

Pronounced in open court.
Dt: 02/06/2023
Gurpreet Singh, Stenographer-II

(Parminder Singh Rai)
Judge, Special Court,
Gurdaspur/UID No.PB00175

Present: Sh. Davesb Kalsi, Advocate, counsel petitioner
Sh. Kiran Kumar, Ld. Addl. P.P for the State.

Police record produced. Arguments heard. Vide my
separate detailed order of even date, bail application has been
dismissed. A copy of this order be attached with remand papers.
Record of present bail application be consigned to record room.

Pronounced in open court.
Dt: 02/06/2023
Gurpreet Singh, Stenographer-II

(Parminder Singh Rai)
Judge, Special Court,
Gurdaspur/UID No.PB00175