

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

CRM-M-20747-2022

Date of decision : 30.08.2022

Kulwinder Singh @ Ghoki

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. S.S. Gill, Advocate
for the petitioner.

Mr. Gurdarshan Singh Sidhu, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

This is a second petition filed under Section 438 Cr.P.C. Seeking pre-arrest bail to the petitioner in case FIR No.59 dated 05.05.2021 registered for the offence under Sections 22, 25 and 29 of NDPS Act, 1985 at Police Station STF Phase-4, SAS Nagar, Mohali, District Mohali.

2. Counsel for the petitioner submits that since the earlier petition filed seeking the same relief was dismissed as withdrawn, thus the present petition would be maintainable. He submits that the petitioner has been nominated on the basis of disclosure statement suffered by co-accused Balwinder Singh from whom recovery of 180000 tablets of Tramadol has been effected. Relying upon *Tofan Singh vs. State of Tamil Nadu* reported as (2021) 4 SCC 1, he submits that such evidence cannot be relied upon at this stage to drive home offence against the petitioner and thus he would be entitled for grant of pre-arrest bail.

3. Mr. Sidhu submits that apart from the present petition being second pre-arrest petition not maintainable, the petitioner is a habitual offender and there is another case wherein he is undertrial for having committed offence under the NDPS Act. However, counsel for the petitioner submits that the petitioner has been acquitted vide judgment dated 25.02.2020 passed by Judge, Special Court, Patiala in a case registered under Section 15 of the NDPS Act.

4. Without going into the question w.r.t. the maintainability of the present petition, this Court is of the view that heavy recovery has been made from the co-accused. Benefit of Tofan Singh's case (supra) cannot be extended while considering pre-arrest bail as per dictum of law laid down in '**State of Haryana vs. Samarth Kumar' Criminal Appeal No.1005 of 2022** decided on 20.07.2022, wherein it has been held that:-

“xx xx xx
8. 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.
9. To grant 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.”

5. Thus in these circumstances, no ground is made out to grant pre-arrest bail to the petitioner.
6. Consequently, the same is dismissed.

(PANKAJ JAIN)
JUDGE

30.08.2022

Dinesh	Whether speaking/reasoned	Yes
	Whether Reportable :	No