

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-25142-2022
Date of decision : 24.11.2022

Rajni Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Manpreet Ghuman, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.84 dated 15.04.2022 registered under Sections 22/29 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Sadar Samana, District Patiala.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and the recovery in the present case has been effected from Rimpi and Makhan Singh and the petitioner is sought to be implicated on the basis of disclosure statement of said both co-accused. It is submitted that no recovery has been effected from the present petitioner and reliance has been placed upon the judgment of the Hon'ble Supreme Court in case titled as “*Tofan Singh vs. State of Tamil Nadu*” reported as ***2021(1) RCR (Criminal) 1*** to contend that the statement of the co-accused

before the police implicating the accused is not admissible in evidence and thus, concession of anticipatory bail should be granted.

Learned State counsel, on the other hand, has opposed the present petition for anticipatory bail and has submitted that recovery of 148 strips each containing 50 tablets, amounting 7400 tablets have been effected from accused Rimpi and Makhan Singh and as per the FSL report, the salt contained in the said tablet is Tramadol Hydrochloride and average weight of the same thus, comes to 2782.4 grams which is a very heavy quantity and the same would fall under the commercial quantity and thus, the bar under Sections 37 of the NDPS Act would apply in the present case. It is further submitted that as per the disclosure statement of Rimpi as well as Makhan Singh, the said tablets have been supplied by the present petitioner after taking an amount of Rs.30,000/- and thus, the present petitioner, who is the supplier, is the main person in the chain of supply. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***State of Haryana vs. Samarth Kumar***” reported as ***2022(3) RCR (Criminal) 991*** to contend that in such a situation the petitioner is not entitled to the concession of anticipatory bail.

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court in ***Samarth Kumar's*** case (supra) has held as under: -

“Leave granted.

2. Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.

3. *Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.*

4. *The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in **Tofan Singh vs. State of Tamil Nadu** reported in (2021) 4 SCC 1.*

5. *But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.*

6. *Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.*

7. *The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.*

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 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.*

10. *In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant -State is entitled to take steps, in accordance with law.”*

A perusal of the above order would show that anticipatory bail has been granted by a Coordinate Bench of this Court on the ground that no recovery had been effected from the accused therein and they were implicated solely on the basis of disclosure statement of the main accused and reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Tofan Singh's*** case (supra) by the Coordinate Bench of this Court while granting the said anticipatory bail.

The Hon'ble Supreme Court in the above-said case observed that the benefit of decision in ***Tofan Singh's*** case (supra), could be taken at the time of seeking the concession of regular bail or at the time of final hearing after conclusion of the trial but the same would not warrant the grant of anticipatory bail and it was observed that the High Court had fallen into an error in granting anticipatory bail to the respondents therein.

A coordinate Bench of this Court vide order dated 23.09.2022 passed in the case ***CRM-M-44196-2022*** titled as ***“Gurpreet Singh vs. State of Punjab”*** had also dismissed the anticipatory bail application of the accused who was not named in the said FIR and was implicated on the basis of disclosure statement of his co-accused. The relevant portion of the said order is reproduced hereinbelow:-

“5. Admittedly, the petitioner is not named in the FIR but in the disclosure statement of his co-accused. The Hon'ble Supreme Court in the case titled as “The State of Haryana versus Samarath Kumar decided on July 20, 2022, has held as under:-

4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh vs. State of Tamil Nadu reported in

(2021) 4 SCC 1.

5. But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.

6. Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.

7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

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”.

Therefore, it is apparent that anticipatory bail cannot be granted to an accused on the grounds that he has only been named as an accused on the basis of a disclosure statement of his co-accused. Therefore, the judgment in “Tofan Sing’s case (supra)” may be relevant for the grant of regular bail or at the time of final adjudication of the Trial.

6. In view of the above, I find no merit in the present petition, and therefore, the same is hereby dismissed.”

Against the said order, Special Leave to Appeal (Crl.)

no.9680/2022 was filed which was dismissed by the Hon'ble Supreme Court vide order dated 07.11.2022.

The present case would squarely fall within the four corners of the judgment of the Hon'ble Supreme Court in *Samarth Kumar's* case (supra). The recovery of the intoxicant tablets effected in the present case is of very heavy quantity and the same would fall within the ambit of the commercial quantity. Rimpi and Makhan Singh, from whom the said recovery has been effected, have specifically mentioned that it was the present petitioner who had supplied the intoxicant tablets to the said persons for an amount of Rs.30,000/-. The custodial interrogation of the petitioner is necessary so as to complete the chain of supply and also to find out the persons who are involved in the drug trade. In case the petitioner is granted anticipatory bail then prejudice would be caused to the case of the prosecution. The sources from which the petitioner had bought the intoxicant tablets are also to be established.

Keeping in view the above said facts and circumstances and in view of the law laid down in the above said judgments, the present petition for anticipatory bail is dismissed.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

November 24, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No