

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

205

CRM-M-33464-2021

Date of Decision : July 26, 2022

SATISH KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. D.P.S.Bajwa, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.114 dated 28.5.2021 under Section 21C, 29 (added later on) of NDPS Act, registered at Police Station Akbarpur, District Rohtak (Haryana).

It has been submitted by the learned counsel for the petitioner that in pursuance of the order passed by this Court on 27.8.2021, the petitioner has joined the investigation and, therefore, the interim order granted to the petitioner may be confirmed. He submitted that in the present case, the petitioner has been falsely implicated and he was on the disclosure statement of the co-accused, namely, Dharminder and in view of the law laid down by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1**, the interim bail granted to the petitioner may be confirmed.

On the other hand, the learned State counsel has stated that although in pursuance of the order dated 27.8.2021, the petitioner has joined the investigation but he has not cooperated with the investigation process. He submitted that one co-accused, namely, Dharminder was arrested on the spot in the present case and there was a recovery of 535

grams of Heroin from him and thereafter the aforesaid Dharminder on his disclosure statement named two persons, namely, Nanha co-accused and the present petitioner, namely, Satish Kumar and the learned State counsel has also pointed out to the affidavit filed by the State in which it has been stated that in the disclosure statement, co-accused, Dharminder has stated that Nanha had given Rs.50,000/- to him and the petitioner had given Rs.2,50,000/- to him for procuring Heroin and in the present case the custodial investigation of the petitioner was required in order to ascertain and to know the names of other persons involved in the incident and how many times the petitioner had given money for supply of Heroin. The learned State counsel while referring to the affidavit filed by the State further submitted that the petitioner is a habitual offender and he is involved in two more cases out of which one is pertaining to NDPS Act which is registered in the State of Orrisa and details have been mentioned in the affidavit itself.

He further relied upon the judgment of the Hon'ble Supreme Court in **State of Haryana Vs. Samarath Kumar, Crl. Appeal No.1055 of 2022** and submitted that the reliance placed by the learned counsel for the petitioner in Tofan Singh's case (Supra) would not be applicable in the present case since it is a case of anticipatory bail and not a regular bail and, therefore, in view of the aforesaid legal position as held by the Hon'ble Supreme Court in the aforesaid case such a plea is not available to the petitioner. He further submitted that the quantity involved in the present case was a commercial quantity and there is no ground available with the petitioner to make a departure from the bar contained under Section 37 of NDPS Act. He further submitted that since the petitioner is a habitual offender there is every likelihood that in case his interim bail is confirmed then he may repeat the offence or may abscond from justice. He further submitted that joining of the investigation was only an empty shell because he did not disclose anything to the IO with regard to the source and his modus operandi in the present case.

I have heard the learned counsels for the parties.

The learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in Tofan Singh's case (Supra) and on the other hand the learned State counsel has relied upon the latest judgment in the case of Samarth Kumar's case (Supra). As per the latest judgment, the plea of disclosure statement of co-accused can be made available to the regular bails but not to the anticipatory bail. Apart from the same, it has been categorically stated by the State counsel that the recovery in the present case was 535 grams of Heroin from the co-accused and the petitioner had paid an amount of Rs.2,50,000/- to him. The petitioner is also involved in one other case under the NDPS Act registered in the State of Orrisa. The submission made by the learned State counsel that the petitioner has not cooperated with the investigation process cannot be ignored and would also become a ground for dismissal of anticipatory bail petition. The learned counsel for the petitioner has not been able to make out any ground for making a departure from the bar contained under Section 37 of NDPS Act.

Consequently, finding no merit in the present, the same is, hereby, dismissed.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

July 26, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No