

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-30058-2022

Date of Decision:-05.12.2022

Sajan @ Bidoo.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Harjinder Singh, Advocate for
Mr. Avtar S. Khinda, Advocate for the Petitioner.

Mr. Ramta Chowdhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 438 Cr.PC is for the grant of anticipatory bail to the petitioner in case FIR No.116 dated 28.05.2022 under Sections 21(b) of NDPS Act, 1985 registered at Police Station City Kapurthala, District Kapurthala.

The brief facts of the case are that while the police party was on patrolling duty one secret informer came present and informed that Bidoo son of Ram Lubhaya (petitioner), Nandini wife of Bidoo and Pinky wife of Soga residents of Mohalla Mehtabgarh, P.S. City Kapurthala were supplying Heroin to drug addicted youngsters in front of their house and if a raid is conducted then they could be apprehended along with Heroin and cash. Based on the said information a raid was conducted at the house of

Bidoo son of Ram Lubhaya. Two ladies and one youngster was standing in front of their house. On seeing the police party the youngster ran away from the spot and the two ladies present threw a polythene in their hand containing Heroin and Indian currency notes. They were apprehended. The first lady disclosed her name as Nandini wife of Bidoo and the second as Pinky wife of Soga. They both disclosed that the youngster who ran away from the spot was Bidoo son of Ram Lubhaya. After complying with the various provisions regarding search and seizure the recovery of 20 grams of Heroin and Rs.40,000/- in cash was effected from the arrested accused.

The Counsel for the petitioner contends that the petitioner was not arrested at the spot. He has been named in the disclosure statement of his co-accused namely Nandini and Pinky and the said disclosure statement is inadmissible in evidence in view of **Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Vs. Union of India 2021(1) RCR (Criminal) 704, State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta &Anr. 2022(1) RCR (Criminal) 762, Surinder Kumar Khanna Vs. Intelligence Officer, Director of Revenue Intelligence, 2018(3) RCR (Criminal) 954 and Sanjeev Chandra Aggarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590.** He contends that in fact on the date of occurrence he was present at Model Jail, Kapurthala to meet his relatives and that fact could be verified from the CCTV Footage of the Jail. Even otherwise, he had joined the investigation and his custodial interrogation is not required and therefore, he be granted the concession of anticipatory bail.

The Counsel for the State on the other hand has filed a reply dated 5.12.2022 and while referring to the contents therefore, she submits

that the wife and relative of the petitioner were arrested at the spot and 20 grams of Heroin and Rs.40,000/- cash was recovered. The Petitioner's name not only figured in the FIR but also in the disclosure statement of the co-accused. As per the judgment in **State of Haryana Vs. Samarth Kumar 2022(3) RCR (Criminal) 991** the petitioner was not entitled to the concession of Anticipatory bail. Even otherwise the stand taken by the petitioner that he was visiting Model Jail, Kapurthala is incorrect. The investigating agency has found that the petitioner had never visited the Jail on the date of occurrence as per the records/register maintained by the Jail Authorities and therefore the question of him being visible in any CCTV footage does not arise. She thus contends that the petitioner did not deserve the concession of bail in view of the serious allegations against him.

I have heard learned Counsel for the parties at length.

The Hon'ble Supreme Court in **State of Haryana Vs. Samarth Kumar 2022(3) RCR (Criminal) 991** 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 v. 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 v. 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.

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.

Thus as per the judgment in ***State of Haryana Vs. Samarth Kumar's case (supra)*** the accused who has been named in a disclosure statement cannot be granted the concession of anticipatory bail.

Further, the ground taken by the petitioner that he visited Central Jail Kapurthala on the date and time of occurrence has been found to be incorrect by the investigating agency.

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

(JASJIT SINGH BEDI)
JUDGE

December 05, 2022

Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No