

CRM-M-32630-2022
Date of decision : 06.09.2022

Versus

Mr. Iqbal Singh Mann, DAG, Punjab.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and the recovery has been effected from co-accused, namely, Rajinder Singh alias Vicky and Sahil Kumar and the petitioner was implicated on the basis of the disclosure statement of the said co-accused. Petitioner is not the registered owner of the truck from which the alleged recovery has been effected. Reliance is placed on the judgment of Hon'ble Supreme Court in ***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 submitted the status report and has opposed the present petition for grant of anticipatory bail. It is submitted that as per the case of the prosecution, it was Rajinder Singh alias Vicky and Sahil Kumar, who were travelling in a truck bearing registration No.PB-11-C-0709, when they were apprehended and recovery of 55 kg and 200 gram of poppy husk had been effected from them and the said quantity would fall within the ambit of commercial quantity. It is submitted that in the disclosure statements of the co-accused persons, they have stated that the present petitioner i.e., Pargat Singh, is their boss and had employed them to deliver the poppy husk and it was on his asking, that they were carrying the said poppy husk in the truck belonging to the petitioner along with the petitioner. It is submitted that although, the registered owner of the truck is Sukhwinder Singh but the petitioner on 14.01.2022, had purchased the same from the said Sukhwinder Singh and the possession of the same was taken from the said Sukhwinder Singh. Sale and purchase agreement of the said truck has been signed on 11.02.2022 by Sukhwinder Singh and Pargat Singh and the same was written on a stamp paper.

Reliance has been placed upon the judgment of the Hon'ble Supreme Court in State of Haryana Vs. Samarth Kumar reported as 2022(3) R.C.R (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 perused the paperbook.

The Hon'ble Supreme Court of India in the case of **State of Haryana Vs. Samarth 2022(3) R.C.R (Criminal) 991** 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 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.”

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 Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1**, 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 Vs. State of Tamil Nadu*** (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.

In the present case there are five circumstances which disentitle the petitioner for grant of anticipatory bail. They are as under:-

- (i) Rajinder Singh alias Vicky in his disclosure statement (Annexure R-3/T) has stated that he was working as driver of the truck bearing registration No.PB-11-C-0709 from which, recovery of commercial quantity of poppy husk had been recovered and he was carrying the same on the asking of his boss i.e., the present petitioner-Pargat Singh. It is relevant to note that the said Rajinder Singh alias Vicky has made two subsequent statements dated 12.06.2022 (Annexure R-1) and 14.06.2022 (Annexure R-3) and in both the said statements it has been stated that petitioner, who is the owner of the truck, had asked Rajinder Singh alias Vicky to carry the poppy husk in the truck and it was at the instance of the present petitioner that he had carried the poppy husk.
- (ii) Sahil kumar was the other person present in the truck who has also given a disclosure statement (Annexure R-2) in which he has stated that it is the present petitioner, who is called the Sarpanch, is the boss of Rajinder Singh alias Vicky and the said Rajinder Singh alias Vicky had asked Sahil Kumar to work as a conductor and further stated that while taking the poppy husk, even a call was received by Rajinder Singh alias Vicky from his boss (present petitioner) asking him to deliver the articles in the area of Lohia, Sultanpur.
- (iii) A perusal of paragraph 10, 11 and 12 of the status report would show that although, the registered owner of the truck was stated to be Sukhwinder Singh but the same was sold by said Sukhwinder Singh to the petitioner and on 14.01.2022, the possession of the said truck was

taken by the petitioner in the presence of the witnesses namely Lal Singh and Joginder Singh and there was a written agreement in respect of the sale and purchase of the above-said truck which was signed by the present petitioner and the same was executed on a stamp paper of Rs.500 and was duly notarized by Sh. Sanjeev Kumar, Notary Public, District Ferozpur.

- (iv) The recovery in the present case is of commercial quantity and thus, the bar under Section 37 of NDPS Act, would apply to the facts of the present case.
- (v) No strong prima facie case has been made out by the petitioner to show mala fide on behalf of either the Police or the co-accused Rajinder Singh alias Vicky and Sahil Kumar who have named the present petitioner as the main person directing them to supply the puppy husk.

Keeping in view the above facts and circumstances, as well as the ratio of law laid down by the Hon'ble Supreme Court in State of Haryana Vs. Samarth Kumar reported as 2022(3) R.C.R (Criminal) 991, the present petition is accordingly dismissed .

Nothing stated above shall be construed as an 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

September 06, 2022
Amandeep

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