

CRM-M-36597-2022

Date of decision: 08.09.2022

Balbir Singh

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**Present:** Mr. V.B. Godara, Advocate
for the petitioner.

Ms. Gagandeep Kaur, AAG, Haryana.

NAMIT KUMAR, J. (ORAL)

This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in a case bearing FIR No.410 dated 03.08.2022 under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act') registered at Police Station Sadar Fatehabad, District Fatehabad.

The brief facts of the case are that on 3rd August, 2022, a police party headed by ASI Kuldeep Singh, apprehended co-accused-Vishnu, son of Kailash Chander on the basis of suspicion and after making compliance of notice under Section 50 of the Act, recovery of 06 grams of heroin was effected from the right pocket of his wearing trouser in the presence of Sh. Vikas Kumar, Assistant Professor, Government Women College, Bhodiakhera. The recovered contraband was taken into police possession in accordance with law. On interrogation, co-accused-Vishnu suffered his disclosure statements of having purchased the recovered contraband from present petitioner/accused-Balbir Singh @ Babri.

The petitioner had filed the application for anticipatory bail under Section 438 Cr.P.C. before the Court of learned Additional Sessions Judge, Fatehabad and the said application was dismissed by the learned Additional Sessions Judge, Fatehabad vide judgment/order dated 08.08.2022, relevant portion of which is reproduced as under:-

“Heard. Merits are not to be dwelt upon at this stage. Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly contraband heroin weighing 06 gms which was recovered from co-accused namely Vishnu, was allegedly procured the same from the present petitioner-accused. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under section 438 of Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of the petitioner-accused is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. As per prosecution, the petitioner accused is a habitual offender as he is involved in one another case under Excise Act and has also been convicted in one case under Section 174-A of IPC. The custodial interrogation of the petitioner-accused is required to find out from where he had been procuring the contraband. Therefore, keeping in view totality of entire scenario and nature of offence, no extraordinary ground is made out in favour of the petitioner-accused for his entitlement of pre-arrest bail.”

Thereafter, the petitioner has filed the instant petition before this Court.

Learned counsel for the petitioner submits that he has been

falsely implicated in the case and he has been nominated on the basis of disclosure statement of Vishnu who was apprehended with 06 grams of heroin and, therefore, is entitled to the grant of pre-arrest bail.

Per contra, the learned State counsel has opposed the grant of anticipatory bail to the petitioner and submits that even if the petitioner has been nominated on the basis of disclosure statement of co-accused, namely, Vishnu, he does not deserve the concession of bail and if granted, he might influence the trial.

She has also placed reliance on the law laid down by the Hon'ble Supreme Court in the case of 'The State of Haryana versus Samarth Kumar' reported as 2022 (3) RCR (Criminal) 991 and she refers to para 4 to 9 of the judgment which is reproduced 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 respondents 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.

The learned State counsel further submits that apart from this case, the petitioner is also involved in other two cases, details of which are as under:-

1. FIR No.152 dated 02.03.2004 under Section 61-1-14 of the Excise Act, Police Station Sadar Hisar.
2. FIR No.237 dated 14.03.2010 under Section 174-A of IPC, Police Station Sadar Hisar (conviction on dated 20.05.2016)

She further points out that in one of the cases, the petitioner was declared a proclaimed offender and FIR under Section 174-A of IPC was registered against him.

In light of the same, even if he has been nominated on the basis of disclosure statement of the co-accused-Vishnu, he cannot escape from his liability and also cannot claim the present relief only on this ground.

After hearing counsel for the parties and perusal of the records, I am of the considered view that the petitioner is involved in two more cases and has been convicted in FIR registered under Section 174-A of IPC wherein he was declared a proclaimed offender. Therefore, in view of the above, he does not deserve the concession of pre arrest bail in the present case and the present petition stands dismissed.

08.09.2022

Neha

Whether speaking/reasoned
Whether reportable

(NAMIT KUMAR)
JUDGE

: Yes/No
: Yes/No