

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37306-2022 (O & M)

Date of decision: 29.08.2022

Kapil Nagar

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Keshav Pratap Singh, Advocate, for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.267 dated 29.12.2021 under Sections 20/29 NDPS Act, 1985 registered with Police Station Tigaon, District Faridabad.

2. The brief facts of the case are that a special informer came and informed the investigating agency that Pawan son of late Satvir, the co-accused of the present petitioner, was running a business of selling *ganja* and had at that time gone somewhere to bring *ganja* and would reach his house at Tigaon after sometime via Junheda road. If a barricading was done at Junheda road, then he could be nabbed red-handed with *ganja*. Based on the said complaint, an FIR came to be registered and Pawan was apprehended. On search, the recovery of 02 Kgs. 490 grams of *ganja* was effected from Pawan.

3. The learned counsel for the petitioner contends that the petitioner and his brother have been named in the disclosure statement of the arrested accused-Pawan and are the alleged suppliers to Pawan. Reference is placed on the disclosure statement (Annexure P-3). He contends that the said disclosure statement is not admissible in evidence. He further contends that there is no evidence of any contact between Pawan and the petitioner in the nature of any call details, etc. In fact, the petitioner was a practicing lawyer and cannot be possibly involved in offences of this kind. He contends that the petitioner was involved in one other case bearing FIR No.227 dated 01.06.2017 in which a compromise is effected and the accused was also nominated in two other cases under the NDPS Act. He claims that he has been falsely implicated. The thrust of the arguments of the learned counsel for the petitioner is that, in fact, the real brothers of the petitioner, namely, Sikander and Sonu sons of Jagat Singh were facing trial in a case FIR No.186/2010 under Sections 147, 148, 149, 332, 333, 353, 341, 307, 186, 427 IPC and Section 25 of the Arms Act registered at Police Station, Dankor, U.P., in which one Inspector-Ranbir Singh, who was posted at CIA Staff, Faridabad, was the complainant. The various FIRs against the petitioner and his family members are an outcome of the animosity of the police officials on account of the aforementioned FIR No.186/2010.

4. The learned State counsel, on the other hand, while opposing the bail application states that there are three other cases i.e. FIR No.151 dated 15.05.2022 under Section 20 of the NDPS Act, 1985 registered with Police Station Dhauj, District Faridabad, FIR No.12 dated 16.01.2022 under Section 20 of the NDPS Act, 1985, registered with Police Station Bhupani, District Faridabad and FIR No.227/2017 under Sections 147, 148, 323, 504,

against the petitioner. However, he does not dispute that FIR No.227/2017 was cancelled on 01.08.2017 by the investigating agency on the ground that the matter was settled between the parties. He, thus, contends that the petitioner does not deserve the concession of bail as he is a habitual offender.

5. I have heard the learned counsel for the parties at length.

6. The allegations against the petitioner are that he is said to have supplied the contraband recovered from his co-accused/Pawan as per the disclosure statement of the said Pawan (since granted regular bail). Besides, the petitioner is involved in three other cases and he is supplier of *ganja*.

7. The Hon'ble Supreme Court in the case titled as "*The State of Haryana versus Samrath Kumar, 2022 LiveLaw (SC) 622*", 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.

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”.

8. A reading of the aforementioned judgment would show that the petitioner could take advantage of the judgment passed in the case of “Tofan Singh versus State of Tamil Nadu, (2021) 4 SCC 1”, at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. Clearly, the grant of anticipatory bail in a case of this nature is not warranted.

9. Even otherwise, the petitioner has a criminal antecedents. He is an accused in three other cases i.e. FIR No.151 dated 15.05.2022 under Section 20 of the NDPS Act, 1985 registered with Police Station Dhauj, District Faridabad, FIR No.12 dated 16.01.2022 under Section 20 of the NDPS Act, 1985, registered with Police Station Bhupani, District Faridabad and FIR No.227/2017 under Sections 147, 148, 323, 504, 506 IPC with Police Station Dankor, District Gautambudh Nagar, U.P, however, the same

(FIR No.227/2017) was cancelled on 01.08.2017 by the investigating agency on the ground that the matter was settled between the parties.

9. At this stage, by no stretch of imagination, can it be said that the petitioner has been falsely implicated. In fact, a thorough investigation is required to unearth his *modus operandi* and to verify the details of other persons to whom the petitioner may have supplied the contraband to, as also to find the source from where the petitioner himself purchased the contraband. Therefore, the custodial interrogation of the petitioner is certainly required.

10. In view of the above, no extraordinary circumstances are made out for the grant of the anticipatory bail to the petitioner. Therefore, the present petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

29.08.2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No