

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-39271-2022

Date of decision : 01.09.2022

Satish

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Mr.Navneet Jindal, Advocate
for the petitioner.

Mr.Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.238 dated 27.05.2022 registered under Sections 20 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station Sampla, District Rohtak, Haryana.

Learned counsel for the petitioner has submitted that in the present case, the recovery of 285 kgs. of *ganja* had been effected from the co-accused Rohit and Parveen, and not from the present petitioner. It is submitted that the petitioner is sought to be implicated on the basis of disclosure statement of co-accused and no recovery has been effected from the present petitioner and thus, the petitioner deserves the concession of anticipatory bail.

Notice of motion.

On advance notice, Mr. Dhruv Sihag, AAG, Haryana, appears and accepts notice on behalf of the respondent-State and has submitted that

opposed the present petition for anticipatory bail and has submitted that, as is evident from para 6 of the order dated 14.07.2022 passed by the Additional Sessions Judge, Rohtak dismissing the anticipatory bail of the petitioner, the recovery in the present case is 285 kgs. of *ganja* which falls under “commercial quantity” and was recovered from the co-accused Rohit and Parveen. It is further submitted that the said co-accused had in their disclosure statements stated that, in fact, it was the present petitioner who was originally driving the vehicle in question and subsequently, he had handed over the said vehicle to the co-accused person from whom the recovery had been effected. It is argued that the present petitioner is, thus, the main accused who had originally brought the commercial quantity of narcotic drugs and had handed over the vehicle in which the said narcotic drugs were being taken to the co-accused. It is submitted that even subsequently, it was the present petitioner who was piloting the said vehicle by going in another vehicle i.e, make swift maruti and the recovery of the said vehicle is yet to be effected from the petitioner and the information required to complete the entire chain of the supply of the said 285 kgs. of *ganja* and the other information regarding the same is to be sought from the petitioner and thus, the custodial interrogation of the petitioner is necessary. It is further submitted that in fact, in a large number of cases, the main accused are functioning behind the curtain and the only way to nab the said persons, who are the main drug peddlers, is by virtue of the disclosure statements suffered by the accused from whom the recovery has been effected. It is submitted that in case, such a person, as the petitioner in the present case, is granted interim protection, then the same would prejudice the investigation, moreso, when the case involves heavy quantity of

contraband, as in the present case, attracting the bar under Section 37 of the NDPS Act. It is also submitted that in the present case there is no averment in the petition so as to even remotely show that the petitioner has been falsely implicated or there was any malafide on the part of any police official or any co-accused who has named the present petitioner and thus, has prayed that the present petition for anticipatory bail be dismissed.

This Court has heard learned counsel for the parties and has perused the paper book.

The Hon'ble Supreme Court, in its latest judgment, passed on 20.07.2022 in a case titled as ***“The State of Haryana vs. Samarth Kumar”*** reported as ***2022 LiveLaw (SC)622*** 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 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 has 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 coordiante Bench of this Court while granting the said anticipatory bail.

The Hon'ble Supreme Court in the abovesaid case observed that the benefit of decision in ***Tofan Singh's*** case (supra) could be taken at the

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, the recovery effected is of 285 kgs. of *ganja* and the same was effected from co-accused Rohit and Parveen and the said quantity falls within “commercial quantity” as stipulated under the Act and the bar under Section 37 of the NDPS Act, would thus apply. The co-accused from whom the recovery has been effected, has specifically named the present petitioner and has stated that the vehicle in which they were carrying the said contraband i.e., 285 kgs. of *ganja*, was earlier being driven by the present petitioner and was handed over by the petitioner to the said co-accused and it was thus, the present petitioner who was in fact the person who was originally bringing the commercial quantity of *ganja*. It is the case of the prosecution that the present petitioner was the main accused and there is a further allegation against the present petitioner that after the said vehicle was handed over to the co-accused, in which the commercial quantity of 285 kgs. of *ganja* was being carried, the petitioner was thereafter piloting the said vehicle in another swift maruti vehicle and the custodial interrogation of the petitioner is necessary in order to get information from the petitioner with respect to the entire chain of supply of the narcotic drugs / substance and to trace the other persons who are involved in the same. The petitioner has not made out a case of false implication, or a case of there being any malafide either on the part of the police authorities or on the part of the co-accused who have implicated the present petitioner. In case the petitioner is granted anticipatory bail, the same would prejudice the investigation. The petitioner is stated to be involved in one more case, i.e.

FIR no.329 dated 27.10.2014 registered under Sections 457, 380, 420, 467, 468, 471, 292, 216, 120-B IPC at Police Station Gohana, District Sonapat, as is stated in para 16 of the petition and thus, he does not have clean antecedents.

Keeping in view the above said facts and circumstances as well as the order passed by the Hon'ble Supreme Court in *Samarth Kumar's* case (supra), the present petition for anticipatory bail is 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 01, 2022
Davinder Kumar

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