

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.102

Case No. : CRM-M No.39997 of 2022

Date of Decision : September 05, 2022

Sonu Petitioner

VS.

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR.

* * *

Present : Mr. S. S. Rana, Advocate
for the petitioner.

Mr. Ferry Sofat, Addl.A.G., Punjab.

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NAMIT KUMAR, J. (Oral) :

This is a petition under Section 438 Cr.P.C. for grant of pre-arrest bail to the petitioner in FIR No.0109 dated 10.07.2022, under Section 21/61 of NDPS Act, 1985, registered at Police Station Division No.4, District Patiala.

As per prosecution version, the FIR in the instant case was registered on 10.07.2022. During barricading at T-Point of Gurdwara Sahib, Patiala, the petitioner, on being stopped by the police party on the basis of suspicion, ran away after throwing the plastic bag in his hand containing 50 grams of smack. The police official chased him but could not succeed in apprehending him. As the petitioner was already known to the Investigating Officer, who was also present in the police party, the FIR was registered against the petitioner. It was also pointed out that the petitioner was a habitual offender as a number of other FIRs have also been registered against him.

After registration of the FIR, the petitioner approached the Court of learned Judge, Special Court, Patiala, seeking pre-arrest bail. However, the same has been dismissed vide order dated 12.08.2022. Aggrieved against the same, the petitioner has filed the present petition seeking pre-arrest bail.

It has been noticed that the petitioner was earlier involved in FIR No.83 dated 27.05.2022, under Section 22 of NDPS Act, 1985, registered at Police Station Division No.4, District Patiala. In the said case also, the petitioner sought pre-arrest bail and the same was granted by a co-ordinate Bench of this Court vide order dated 01.08.2022. Para-7 of the said judgment reads as under :-

“7. In addition, in case, the bail applicant-petitioner re-indulges in criminal activities, thereupon, it is open to the investigating officer concerned to forthwith arrest the bail applicant-petitioner, and, thereafter to produce him before the learned Magistrate concerned, for the latter making an order for his being put to judicial custody.”

It is to be noticed that the said FIR is dated 27.05.2022 and the petitioner is again involved in the present FIR dated 10.07.2022 registered against the petitioner in a period of less than two months.

On receipt of advance copy of the petition, learned State counsel has appeared on behalf of the respondent-State and has apprised this Court that apart from these two cases, eight more FIRs have been registered against the petitioner, details whereof are as under :-

<i>No.</i>	<i>FIR No. and date</i>	<i>Under Sections</i>	<i>Police Station</i>	<i>Status</i>
01	No.40 dated 28.03.2020	61/1/14 of Excise Act	Lahori Gate, Patiala	ND -16.09.2022
02	No.74 dated 16.06.2020	61/1/14 of Excise Act	Lahori Gate, Patiala	ND -13.09.2022
03	No.93 dated 23.07.2020	61/1/14 of Excise Act	Lahori Gate, Patiala	ND -09.09.2022
04	No.108 dated 15.08.2020	61/1/14 of Excise Act	Lahori Gate, Patiala	ND -19.10.2022
05	No.126 dated 06.09.2020	61/1/14 of Excise Act	Lahori Gate, Patiala	ND -21.09.2022
06	No.08 dated 09.01.2021	61/1/14 of Excise Act	Lahori Gate, Patiala	To Court
07	No.182 dated 07.09.2020	61/1/14 of Excise Act	PS Sadar, Patiala	ND -12.10.2022
08	No.183 dated 12.08.2021	458,379-B, 323, 506, 427 IPC	Lahori Gate, Patiala	Under Investigation

Counsel for the petitioner has argued that the petitioner has been named on the disclosure statement of a co-accused, which cannot be read in evidence and non-commercial quantity is involved in this case. Therefore, petitioner is entitled for pre-arrest bail. The said contention of learned counsel for the petitioner has been opposed by learned State counsel by arguing that apart from the fact that he has been named on the disclosure statement of a co-accused, the petitioner is involved in number of cases and therefore, as per the law laid down by Hon'ble Supreme Court in the case of **State of Haryana vs. Samarth Kumar** reported as **2022(3) RCR (Criminal) 991**, the petitioner is not entitled for grant of pre-arrest bail as he is a habitual offender. The relevant portion of the said judgment 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.

xx xx xx xx

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.”*

I have heard learned counsel for the parties and perused the case file.

This Court is of the opinion that the petitioner cannot be granted the concession of pre-arrest bail in the present case as earlier also, the petitioner was granted pre-arrest bail vide order dated 01.08.2022 in FIR No.83 dated 27.05.2022, under Section 22 of NDPS Act, 1985, registered at Police Station Division No.4, District Patiala and the co-ordinate Bench, while granting the said concession, clearly put the condition that if the bail applicant – petitioner re-indulges in criminal activities, thereupon, it is open to the Investigating Officer concerned to forthwith arrest the bail applicant-petitioner. In spite of the said condition, the petitioner has indulged into another illegal activity and has been involved in the present FIR. Further, total 10 FIRs have been registered against the petitioner under NDPS Act, 1985 and Punjab Excise Act, 1914, which clearly show that the petitioner is

a habitual offender and does not deserve the concession of pre-arrest bail.

Moreover, Hon'ble Supreme Court, in the case of **Samarth Kumar** (*supra*), has held that even if a person has been involved in the FIR on the basis of disclosure statement of another accused, the same is not a ground for grant of pre-arrest bail.

In view of what has been stated above, I find no merit in the instant petition for grant of pre-arrest bail and the same is accordingly dismissed with no order as to costs.

September 05, 2022
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(NAMIT KUMAR)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>