

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(102)

CRM-M-40611-2022

Date of decision: - 07.09.2022

Jony alias Balwinder

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Satyaveer Singh, Advocate
and Mr. Tapan Masta, Advocate
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.852 dated 09.12.2021, under Sections 21(C), 22(C) and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station Assandh, District Karnal.

2. Learned counsel for the petitioner has submitted that in the present case, although, the recovery effected falls within the ambit of commercial quantity, but the said recovery was effected from co-accused Chhubeg Singh and not from the present petitioner and the present petitioner is sought to be implicated on the basis of disclosure statement

made by said Chhubeg Singh (Annexure P-4). In support of his arguments, learned counsel for the petitioner has placed reliance upon by the judgment of the Hon'ble Supreme Court in case titled as "**Tofan Singh vs. State of Tamil Nadu**" reported as **2021(4) SCC 1**, to contend that the disclosure statement made before the officer under the NDPS Act is not admissible in evidence and thus, the petitioner deserves the concession of anticipatory bail. It is submitted that the petitioner was granted interim protection by the Additional Sessions Judge, Karnal and he had joined the investigation. It is further submitted that the petitioner is not involved in any other case and thus, his case distinguishable from the facts which were in case titled as "**The State of Haryana Vs. Samarth Kumar, reported as 2022 LiveLaw (SC) 622**" before the Hon'ble Supreme Court

3. Learned Sate counsel, on the other hand, has opposed the present petition for the concession of anticipatory bail and has submitted that as per the disclosure statement of Chhubeg Singh, the said Chhubeg Singh had purchased the contraband from the present petitioner and the same was done for the purpose of his personal consumption as well as for selling the same in the village. It is further submitted that as is apparent from the order dated 23.08.2022 (Annexure P-6), the petitioner had not cooperated with the investigative agency and had not given the necessary details with respect to the source of the alleged contraband and thus, his custodial interrogation is necessary. It is also submitted that in the present case, the quantity involved is a commercial quantity, thus, the bar under NDPS Act would apply. It is stated that in view of the latest judgment of

the Hon'ble Supreme Court in *Samarth Kumar's case (supra)*, the petitioner does not deserve the concession of anticipatory bail. It is argued that in fact in the facts and circumstances, it is the present petitioner, who is the main accused as he is the supplier of the contraband and in case, the concession of anticipatory bail is granted to the petitioner, then, the same would seriously cause prejudice to the case of the prosecution.

4. This Court has heard learned counsel for the parties and has gone through the paper-book.

5. The Hon'ble Supreme Court in *Samarth Kumar's case (supra)* 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 2 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 3 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 the High Court had granted the concession of pre-arrest bail to the respondents on the ground that no recovery was effected from the respondents therein (accused) and that they have been implicated on the basis of the disclosure statement of one Dinesh Kumar. Even in the said case, reliance had been placed upon the judgment of the Hon'ble Supreme Court in **Tofan Singh's case (supra)**. In the said case, it was also the argument of the respondents therein (accused) that the respondents have been granted the concession of regular bail after the charge-sheet had been filed and

thus, nothing survived in the appeal but the Hon'ble Supreme Court, however, rejected the said argument and observed that the order granting regular bail was in pursuance of the anticipatory bail granted by the High Court and thus, it could not be said that the appeal had been rendered infructuous. It is further observed that the benefit of the judgment of the Hon'ble Supreme Court in *Tofan Singh's case (supra)* can perhaps be taken at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial and to grant anticipatory bail in such a case is not warranted and thus, the order of the High Court granting anticipatory bail was set aside.

6. The case of the present petitioner squarely falls within the four corners of the above-said judgment and the recovery effected from co-accused Chhubeg Singh is of 1600 Tablets of Tramadol Hydrochloride, 450 Tablets of Clovidol 100-SR, 500 Tablets Alprasafe 0.5 and there is no dispute that the recovery of contraband would fall within the definition of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply.

7. A perusal of the disclosure statement of Chhubeg Singh (co-accused) would show that he has specifically stated that he is in the habit of consuming drugs and that he had purchased the said contraband from the present petitioner. It is also the stand of the prosecution, which is further apparent from para 7 of the order dated 23.08.2022 passed by the Additional Sessions Judge, Karnal dismissing the anticipatory bail of the petitioner, that the petitioner had not cooperated with the investigative agency and his custody was required so as to trace out the source of the

contraband.

8. In view of the said circumstances, this Court is of the view that the custodial interrogation of the petitioner is necessary. It is a matter of common knowledge that the main accused in an illegal supply of drugs, is the person who is veiled behind the curtains and it is only when persons, who are actually transporting or in possession of the said drugs on the directions of the said main person, are apprehended, then the main culprits behind the drugs supply chain can be ascertained and nabbed on the basis of the information disclosed by the persons transporting/in possession of the said drugs.

9. In the present case, it is the present petitioner who is stated to be the main person as per the statement of Chhubeg Singh. In case the petitioner is granted the concession of anticipatory bail, the same would prejudice the case of the prosecution. The argument of learned counsel for the petitioner to the effect that since the petitioner is not involved in any other case, whereas, the case before the Hon'ble Supreme Court in the case of ***Samarth Kumar (supra)*** was a habitual offender and thus, the said judgment would not apply to the facts of the present case, is misconceived, inasmuch as, a perusal of the judgment would show that there are two respondents/accused persons and the said allegations of being a habitual offender was only against one of the respondents/accused therein, who was stated to be the respondent in the second appeal. Thus, one of the respondents therein was not stated to be a habitual offender. At any rate, a perusal of para 4 of the said judgment would show that the High Court had granted bail by relying upon judgment of Hon'ble

Supreme Court in *Tofan Singh's case (supra)*, which order had been set aside after observing that the benefit of *Tofan Singh's case (supra)* could be taken at the time of arguing the regular bail application or at the time of final conclusion of the trial.

10. Keeping in view the abovesaid facts and circumstances, the present petitioner does not deserve the concession of anticipatory bail and thus, the present petition is dismissed.

11. However, nothing stated above shall be construed as a final 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 petition.

September 07, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes