

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-43804-2022

Date of Decision:-22.09.2022

Kamla.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Mitul Singh Rana, Advocate for the Petitioner.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 438 Cr.PC is for grant of anticipatory bail to the petitioner in case FIR No.98 dated 04.09.2022 registered under Sections 15 of the NDPS Act, 1985 registered at Police Station Haryana, District Hoshiarpur.

The brief facts of the case are that while the police party was on patrolling duty and had done nakabandi, one White colour Swift Car driven by a person with short hair was seen coming from Dholwaha side. The driver of the car on noticing the police party checking vehicles stopped his car at some distance from the naka and was turning back. Then his car stopped. The driver then started running back leaving behind his car. He was caught and he disclosed his name as Ghulam Nabi Baba. A recovery of 53 Kgs of Poppy Husk was effected from him and on his disclosure statement the applicant was nominated as an accused.

The Counsel for the petitioner contends that the petitioner has been named in the disclosure statement of her co-accused which is not admissible in evidence and therefore, she is entitled to the concession of anticipatory bail. He further contends that other than the said disclosure statement there is no admissible evidence inculcating her in the commission of the offence and therefore she deserves the concession of anticipatory bail. Reliance is placed on the judgment in **Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592.**

I have heard learned Counsel for the petitioner at length.

The Hon'ble Supreme Court in ***State of Haryana Vs. Samarth Kumar 2022(3) RCR (Criminal) 991*** 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 v. 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 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.

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.

Therefore where the person has been named in the disclosure statement of a co-accused that by itself could not entitle the accused to the grant of anticipatory bail though that factor may be relevant for the consideration of the regular bail application as also at the time of final adjudication of the matter.

Even otherwise the applicant is a prior convict having been convicted in FIR No.122 dated 20.09.2018 under Section 15 of NDPS Act, 1985 P.S. Sadar, Hoshiarpur.

In view of the aforementioned discussion, I find no merit in the present petition and the same is hereby dismissed.

**(JASJIT SINGH BEDI)
JUDGE**

September 22, 2022
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>