

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(104)

CRM-M-43830-2022

Date of decision: - 28.09.2022

Vinod

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Tanu Priya Singh, 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.269 dated 23.07.2022, under Sections 18/61 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (Sections 27A and 29 of the NDPS Act have been added later on), registered at Police Station Babain, District Kurukshetra.

2. Learned counsel for the petitioner has submitted that in the present case, the recovery of 1kg. 300 grams of opium has been effected from Mohammad Akib Raja and not from the present petitioner and the said Mohammad Akib Raja has named two persons, including one Rajaryan Shrivastav from whom the said person had purchased the contraband in question and not named the present petitioner. It is further submitted that it is only Rajaryan Shrivastav who has named the present

petitioner. 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. It is stated that the recovery in the present case is of non-commercial quantity and thus, the bar under Section 37 of the NDPS Act would not apply. Learned counsel for the petitioner also stated that a Co-ordinate Bench of this Court in a case titled as "**Arjan Singh Vs. State of Punjab**", has issued notice of motion, vide order dated 22.08.2022 after considering judgment of Hon'ble Supreme Court in "**State of Haryana Vs. Samarth Kumar**", reported as **2022 Live Law (SC) 622** and has also granted interim protection to the petitioner therein and the matter is now listed for hearing on 24.11.2022.

3. Learned State counsel on the other hand has opposed the present petition for anticipatory bail and has submitted that in the present case, the recovery of 1 kg. 300 grams of opium was effected from co-accused Mohammad Akib Raja who, in his disclosure statement, had stated that he had purchased the same from co-accused Rajaryan Shrivastav and the said co-accused Rajaryan Shrivastav was arrested on 28.07.2022 and in his disclosure statement, Rajaryan Shirvastav disclosed that he had purchased the said contraband from the present petitioner. It is stated that thus, it is the present petitioner who is the original seller of the contraband in question and thus, does not deserve the concession of anticipatory bail. It is submitted that in order to get to eradicate the illegal drug trade, it is necessary to have custodial interrogation of the persons

who, on the basis of the information given by the co-accused, are the main suppliers of the drugs. It is submitted that the petitioner has not alleged any malafide against either the police officials or against the co-accused Rajaryan Shrivastav, who has named the present petitioner. It is submitted that the main culprits in a case of illegal drug trade are the persons who are the suppliers of the said drugs and in case, the concession of anticipatory bail is granted to them, then, the same would seriously prejudice the case of the prosecution. Learned State counsel has relied upon the judgment of the Hon'ble Supreme Court in **Samarth Kumar's case (supra)** and has submitted that the principle of law laid down in the said judgment would apply on all fours in a case where the recovery is of non-commercial quantity also, as the person who is the supplier of the drugs is the main culprit and in such a situation whether the recovery from the person who has been apprehended is commercial or non-commercial would be immaterial and would not entitle the petitioner to the concession of anticipatory bail as the custodial interrogation of such a person is necessary.

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 judgment 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, 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 was further observed that the benefit of the judgment of the Hon'ble Supreme Court in **Tofan Singh's case (supra)** could 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 for grant of anticipatory bail deserves to be dismissed on the following grounds: -

- (i) The recovery in the present case of 1 Kg. 300 grams of opium was effected from co-accused Mohammad Akib Raja, who, in his disclosure statement, had stated that he had

purchased the same from Rajaryan Shrivastav and the said Rajaryan Shrivastav was arrested on 28.07.2022 and from him an amount of Rs.5,000/- was recovered and the said Rajryan Shrivastav had stated that he had purchased the contraband in question from the present petitioner and thus, as per the case of the prosecution, the petitioner is the main supplier of the contraband.

- (ii) The name of the supplier of the contraband only comes forth once the other persons in the distribution chain are apprehended. The custodial interrogation of the supplier/petitioner would be absolutely necessary in order to complete the chain of events and also to nab the other persons involved in the entire gamut of illegal drug trade. Other evidence against the supplier (in the present case, the petitioner), can best be collected by the prosecution only if they are given a free hand to carry out the investigation for which, the custodial interrogation is necessary.
- (iii) The petitioner has neither alleged any malafide against the co-accused Rajaryan Shrivastav who has named the present petitioner nor against any other police officials so as to make out a case of false implication.
- (iv) Reliance sought to be placed upon an interim order passed by a Co-ordinate Bench of this Court, in which the main case is pending for 24.11.2022 would not further the case of the petitioner, inasmuch as, the said order is only an interim

order and the said case has not been finally adjudicated. Moreover, this Court is bound by the ratio of law laid down by the Hon'ble Supreme Court in **Samarth Kumar's case (supra)**, as per which, a person who is implicated on the basis of disclosure statement of the co-accused as being one of the persons involved in the drug trade, does not deserve the concession of anticipatory bail. In the said case, the judgment of the Hon'ble Supreme Court in **Tofan Singh's case (supra)** was considered and it was observed that the arguments based upon the judgment of **Tofan Singh's case (supra)** can only be considered after the investigation is complete and the challan has been submitted or at the time of final hearing of a case. Thus, in effect, the prosecution has been given a free hand to collect all possible evidence against the accused persons, including against the person who is the supplier as per the disclosure statement suffered by the co-accused persons, for which his custodial interrogation is necessary. The said principle would apply irrespective of the fact as to whether the recovery effected from the co-accused of the narcotic drugs/substance falls under commercial quantity or non-commercial quantity.

7. 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.

8. 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 28, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes