

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44196-2022 (O & M)

Date of decision: 23.09.2022

Gurpreet Singh

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Bindu Tanwar, Advocate, for the petitioner.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present second petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in FIR No.86 dated 28.07.2022 under Sections 22/29/61/85 of the NDPS Act, registered at Police Station Mehna, District Moga, Punjab.

2. The brief facts of the case are that when the investigating agency was on patrolling duty, then a secret informer informed that Pargat Singh @ Kala and Gagandeep Singh who were in the business of selling intoxicating tablets were coming on a motorcycle in order to supply the same to the customers. If a *nakabandi* was held near the Railway crossing, then they could be apprehended. Based on the aforesaid information, a *nakabandi* was held and the accused were arrested and a recovery of 5000 intoxicating tablets containing Tramadol Hydrochloride was effected from them. The name of the petitioner surfaced during the investigation on the basis of the disclosure statement of the co-accused.

The petitioner had filed his first petition for anticipatory bail, which was dismissed as withdrawn vide order dated 01.09.2022 (Annexure P-7) passed by this Court. Thereafter, the present second anticipatory bail petition has been filed.

3. The learned counsel for the petitioner contends that the petitioner has been named in the disclosure statement of his co-accused which has no evidentiary value. Reliance is placed on the judgment of the Hon'ble Apex Court passed in the case of "Tofan Singh versus State of Tamil Nadu, 2020 SCC Online SC 882", and the orders passed by the Co-ordinate Bench of this Court in the cases titled as "Daljit Singh vs. State of Haryana (CRM-M-12051-2020 dated 17.06.2020)" and "Munish Kumar Vs. State of Punjab (CRM-M-44486-2021 dated 15.02.2022)". He contends that the petitioner has been falsely named by his co-accused Pargat Singh. In fact, no recovery was to be effected from the petitioner and the Village Panchayat has also passed a resolution in his (petitioner's) favour (Annexure P-4) stating that he has been falsely implicated. The employer of the petitioner has also furnished a self-declaration (Annexure P-5) in his favour testifying as to his good character.

4. I have heard the learned counsel for the petitioner at length.

5. Admittedly, the petitioner is not named in the FIR but in the disclosure statement of his co-accused. The Hon'ble Supreme Court in the case titled as "The State of Haryana versus Samarath Kumar 2022 decided on July 20, 2022", 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 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 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”.

Therefore, it is apparent that anticipatory bail cannot be granted

to an accused on the grounds that he has only been named as an accused on

the basis of a disclosure statement of his co-accused. Therefore, the judgment in “Tofan Sing’s case (supra)” may be relevant for the grant of regular bail or at the time of final adjudication of the Trial.

6. In view of the above, I find no merit in the present petition, and therefore, the same is hereby dismissed.

September 23, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No