

**107 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-45005-2022

Date of decision: 28.09.2022

Basant @ Lilu Ram @ Basant KumarPetitioner

versus

State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

NAMIT KUMAR, J.

This is a second petition filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in a case bearing FIR No.210 dated 19.09.2021 under Sections 20/27-A of NDPS Act, 1985 registered at Police Station Bhattu Kalan, District Fatehabad.

The present case was got registered on the statement of Inspector, Vikram Josan on the basis of suspicion while patrolling the area in relation to narcotic substances for stopping the commission of narcotic offences.

Brief facts of the case are that on 19.09.2021, on suspicion, a police party headed by the complainant, apprehended co-accused-Mani Ram and Amit Kumar while riding motorcycle bearing registration No. HR-22G/9643 and on search, recovered 2 kg and 200 grams of *ganja* in a plastic bag lying kept on the fuel tank of their motorcycle. The recovered contraband was taken into police possession in accordance with law. On interrogation, both the co-accused suffered their disclosure statements of having purchased the recovered contraband from the present petitioner-Basant @ Lilu Ram @ Basant Kumar and, therefore, Section 27-A of the

NDPS Act has been added.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case on the basis of disclosure statements of co-accused-Mani Ram and Amit. He further submits that nothing is to be recovered from the petitioner and he is ready to join the investigation.

Notice of motion.

Ms. Gaganpreet Kaur, AAG, Haryana puts in appearance and accepts notice on behalf of the respondent-State.

The learned State counsel has opposed the grant of anticipatory bail to the petitioner and submits that even if the petitioner has been nominated on the basis of disclosure statement of co-accused, namely, Mani Ram and Amit, he does not deserve the concession of bail and if granted, he might influence the trial.

She has also placed reliance on the law laid down by the Hon'ble Supreme Court in the case of 'The State of Haryana versus Samarth Kumar' reported as 2022 (3) RCR (Criminal) 991 and she refers to para 4 to 9 of the judgment which 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.
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 respondents 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.

She further submits that apart from the present case, the petitioner is also involved in five more cases and out of those, two cases registered under the NDPS Act out of which, he is convicted in one case. The details of the five cases are as under:-

1. FIR No.349 dated 03.07.2002 under Sections 8/9 Parole Act, Police Station Civil Lines Hisar (Convicted).
2. FIR No.58 dated 02.05.2004 under Sections 323/285/216/34/506 of IPC and Section 25 of the Arms Act, Police Station Bhattu Kalan (Convicted).
3. FIR No.11 dated 14.01.2014 under Section 18 of the NDPS Act, Police Station Bhattu Kalan (Acquittal).
4. FIR No.116 dated 04.02.2013 under Sections 42 of Prisons Act, Police Station Civil Lines, Hisar (Acquittal).
5. FIR No.270 dated 17.11.1998 under Section 18 of the NDPS Act, Police Station Bhattu Kalan (Convicted).

In light of the same, even if he has been nominated on the basis of disclosure statement of the co-accused-Mani Ram and Amit, he cannot escape from his liability and also cannot claim the present relief

only on this ground.

After hearing counsel for the parties and perusal of the records, I am of the considered view that the petitioner is involved in five more cases and has been convicted in FIR registered under the NDPS Act. Therefore, in view of the above, he does not deserve the concession of pre arrest bail in the present case and, thus, the present petition stands dismissed.

28.09.2022

Neha

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No