

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

**CRM-M-45310-2022**

**Date of Decision:- 10.10.2022**

**Malkiat Singh.**

.....Petitioner.

Vs.

**State of Punjab.**

.....Respondent.

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

Present:- Mr. Amit Arora, Advocate for the Petitioner.

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**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.14 dated 28.01.2022 registered under Sections 21, 27(A) of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sarai Amant Khan, District Tarn Taran.

The brief facts of the case are that the investigating agency received information that one White coloured car bearing registration number PB-02-CS-0213 was coming from the village Rajatal side towards Sarai Amant Khan in which three young persons were sitting and were in possession of Heroin and drug money and they be arrested. Based on the information the investigating agency proceeded towards the spot and saw the said car coming. The car was signalled to stop but the driver of the aforesaid vehicle sped away and took the car into the house of Angrej Singh resident of Village Rakh SAKI. The police party reached the house and the

three young persons who were carrying a black coloured plastic bag in their hands were found to be Angrej Singh, Malkit Singh and Chamkaur Singh who ran away from the back side towards the village. They were known to the police party earlier as cases under the NDPS Act stood registered against them. Due to darkness said persons could not be apprehended and the search of the house was conducted and a white coloured car bearing number PB-02-CS-0213 was taken into police custody. Based on the aforesaid information present FIR came to be registered.

During the course of investigation Angrej Singh co-accused was arrested and 11 grams of Heroin was got recovered from him. Thereafter Chamkaur Singh was arrested.

The petitioner's name figures in the disclosure statement of the co-accused.

The Counsel for the petitioner contends that the petitioner was not arrested from the spot and nothing has been recovered from him. IN fact his co-accused Angrej Singh was arrested and 11 grams of Heroin was recovered from him. Thereafter Chamkaur Singh was also arrested but nothing was recovered from him. Both Angrej Singh and Chamkaur Singh have been granted the concession of bail. The petitioner had been named only on their disclosure statement, therefore, no case for custodial interrogation is made out and the petitioner deserves the concession of anticipatory bail.

The Counsel for the State on the other hand contends that as may as 10 cases under the NDPS Act stands registered against the petitioner. In FIR No.90 and 47 he stands discharged whereas in FIR No.45, 35 and 82, the petitioner is on bail pending trial. He contends that in

view of the criminal antecedents of the petitioner with a number of cases under the NDPS Act having been registered against him, he does not deserve the concession of anticipatory bail.

I have heard learned Counsel for the petitioner at length.

Admittedly, the petitioner has not been arrested at the spot and has been named in the disclosure statement of his co-accused. 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.*

The petitioner is apparently a habitual offender with a number of cases registered against him under the NDPS Act. Even as per the petition itself, in three of the said cases the petitioner is undergoing trial though he is said to be on bail.

Be that as it may the provisions of Section 37 of the NDPS Act would certainly bar the grant of bail to the petitioner.

Keeping in view the above, I find no merit in the present petition and the same is hereby dismissed.

( JASJIT SINGH BEDI )  
JUDGE

October 10, 2022  
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| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |