

**(103) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-46466-2022
Date of Decision: 11.10.2022

KHUSHPREET SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Waraich (Rana), Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J.

This 2nd petition has been filed under Section 438 Cr.P.C. for the grant of anticipatory bail in case bearing FIR No.119 dated 04.08.2022 (Annexure P-1) registered under Sections 15 of NDPS Act (Sections 25 and 29 of NDPS Act added later on) at Police Station Sirhind, District Fatehgarh Sahib.

2. The brief facts of the case are that while the police party was on patrolling duty secret information was received by them that Lakhdeep Singh son of Santokh Singh and Mandeep Singh son of Rajinder Singh who were drivers on trucks used to bring poppy husk from other States and sold the same in Punjab. On that day (04.08.2022) they were coming on their truck

bearing No.PB-10HT-1382 with poppy husk from Rajpura side to Sirhind side and if a *Naka* was installed they could be apprehended with the poppy husk.

Based on the aforementioned information, the present FIR came to be registered and during the course of investigation the recovery of 220 kilos of poppy husk was effected from the cabin of the truck from five different plastic bags.

3. The learned counsel for the petitioner contends that the petitioner was not arrested at the spot. In fact, he had purchased the truck which was further given to Lakhdeep Singh for transportation and the possession of the same had been handed over to him on 30.05.2022. Lakhdeep Singh was to pay the instalment of Rs.5 lakhs outstanding against the truck and was responsible for all consequences. He contends that merely because he had been named on the basis of a disclosure statement of his co-accused would not disentitle him to the grant of bail in view of the judgments in *Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592*, *Rakesh Kumar Singla Versus Union of India, 2021(1) RCR (Criminal) 704*, *Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954* and *State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762*. He has also placed reliance on various orders of this Court to contend that where a person has been named in a disclosure statement, he ought to be granted the concession of anticipatory bail.

4. The learned State counsel while opposing the grant of anticipatory bail to the petitioner contends that the petitioner was named in

the disclosure statement of his co-accused. In fact, Lakhdeep Singh the arrested co-accused is his real brother. The truck belongs to the petitioner which has been given on contract. He further contends that in view of the judgment in *State of Haryana Versus Samarth Kumar, 2022(3) R.C.R. (Criminal) 991*, the petitioner is not entitled to the grant of anticipatory bail.

5. I have heard the learned counsel for the parties at length.

6. It may be pertinent to mention here that this is the second bail petition of the petitioner, the first one having been dismissed as withdrawn vide order dated 29.08.2022. Quite apparently, there are no change in circumstances under which the second petition for the grant of anticipatory bail has been filed.

7. Be that as it may, admittedly, the petitioner has been named in the disclosure statement of his co-accused. He also happens to be the owner of the truck in question and Lakhdeep Singh the arrested co-accused is his real brother.

The Hon'ble Supreme Court in the case of *State of Haryana Versus Samarth Kumar* (supra), 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.

[emphasis supplied]

8. In view of the aforementioned discussion as also the judgment in the case of **State of Haryana Versus Samarth Kumar** (supra), the petitioner is not entitled to the grant of anticipatory bail.

9. Therefore, the present petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

11.10.2022

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No