

Date of decision: 03.10.2022

.....Petitioner

.....Respondent

Present: Mr. Dinesh Nagar, Advocate
for the petitioner.

This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in a case bearing FIR No.0073 dated 22.08.2022 under Sections 15/25/29 of the NDPS Act, 1985 registered at Police Station Kathgarh, District SBS Nagar.

Brief facts of the case are that on 22.08.2022, on the basis of secret information, ASI Jasvir Singh when patrolling, he came to know that one, Surjit Singh s/o Arjun Singh is indulged in the business of bringing poppy husk from the other States in his truck bearing No. PB-12-N-2621, through his drivers, Jatinder Singh @ Kainchi and Davinder Singh and is supplying the said contraband. It was further informed by the secret informer that on 22.08.2022, the said drivers were bringing heavy quantity of poppy husk from Rajasthan side for Surjit Singh and if proper raid is conducted, the culprits can be apprehended along with large quantity of poppy husk. Thereafter, on raid being conducted by the police, poppy husk weighing 52 kgs was recovered from truck No.PB-12-N-2621 and the said drivers were arrested at the spot.

Learned counsel for the petitioner contends that although, the

truck belongs to the petitioner, however, he has been implicated on the basis of disclosure statement of co-accused-Davinder Singh during his interrogation. He further submits that nothing is to be recovered from the petitioner and he is ready to join the investigation.

Notice of motion.

Mr. G.S. Dhillon, AAG, Punjab 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 the quantity of contraband alleged to have been recovered is commercial quantity. Even if the petitioner has been nominated on the basis of disclosure statement of co-accused, namely, Davinder Singh, he does not deserve the concession of bail and if granted, he might influence the trial.

He 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.

In light of the same, even if the petitioner has been nominated on the basis of disclosure statement of the co-accused-Davinder Singh, he cannot escape from his liability and also cannot claim the relief of pre-arrest bail only on this ground.

After hearing counsel for the parties and perusal of the records, I am of the considered view that the alleged recovered quantity of contraband is commercial. 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.

03.10.2022
Neha

(NAMIT KUMAR)
JUDGE

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