

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46651-2022

Date of decision : 11.10.2022

Gurmit Singh

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Jashandeep Singh Sandhu, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

Prayer is for grant of pre-arrest bail in FIR No.296 dated 15.09.2022, registered for the offences punishable under Section 18b of NDPS Act (Sections 27A and 29 of NDPS Act added later on) at Police Station B-Division, Amritsar, District Amritsar.

2. Counsel for the petitioner contends that the petitioner has been nominated on disclosure suffered by co-accused from whom recovery of 300 gms of opium was made. He submits that merely on the basis of disclosure, the petitioner has been nominated and thus in view of law laid down in '*Tofan Singh vs. State of Tamil Nadu*' reported as *(2021) 4 SCC 1*, '*Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence*' reported as *2018 (8) SCC 271*, the same cannot be read against the petitioner. He further submits that in view of the recovery effected by the co-accused, which is less than commercial quantity, rigors of Section 37 of the NDPS Act will not be attracted.

3. State counsel submits that on the basis of law laid down by Apex Court in '*State of Haryana vs. Samarth Kumar*' reported as **2022 (3) RCR (Crl.) 991**, benefit of dictum of law laid down in Tofan Singh's case (supra) cannot be extended at this stage.

4. I have heard learned counsel for the parties and have gone through the records of the case.

5. This Court is of the view benefit of Tofan Singh's case (supra) cannot be extended while considering pre-arrest bail as per dictum of law laid down in Samarth Kumar's case (supra) decided on 20.07.2022, wherein it has been held that:-

“xx xx xx
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.”

6. Thus in these circumstances, no ground is made out to grant pre-arrest bail to the petitioner.

7. Consequently, the same is dismissed.

(PANKAJ JAIN)
JUDGE

11.10.2022
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No