

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46776-2022 (O & M)

Date of decision: 12.10.2022

Makhan Singh

... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Amandeep, Advocate,
for Mr. Vikas Bishnoi, Advocate, for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.1042 dated 29.08.2022 under Section 21(b) of the NDPS Act, 1985 registered at Police Station Sadar Hisar, District Hisar.

2. The brief facts of the case are that while the police party was on patrolling duty, a secret information was received by the ASI that Ranjit Singh son of Kartar Singh was indulging in selling heroin and would come to Government School village Piranwali on his motorcycle bearing registration No.HR-20AF-3402 make Hero HF Deluxe of black and red colour for selling the same. If a *nakabandi* was set-up then he could be caught alongwith the said heroin. Pursuant thereto, after complying with the mandate of Section 42 of the NDPS Act, a *nakabandi* was set-up and a person was seen coming on a motorcycle and on seeing the police party, he

stopped the same and tried to turn the motorcycle towards village Piranwali,

District Hisar. He was apprehended on suspicion and he disclosed his name as Ranjit Singh. After complying with the provisions of Section 50 of the NDPS Act, recovery of 20 grams of heroin was effected from him.

The petitioner is said to have been named in the disclosure statement of the arrested accused-Ranjit Singh, who disclosed that he had purchased heroin from the petitioner-Makhan Singh.

3. The learned counsel for the petitioner contends that the petitioner has not been named in the FIR and has only been named in the disclosure statement of his co-accused, as per which, the petitioner is stated to have supplied the contraband to the arrested accused-Ranjit Singh. He contends that in the light of the judgments passed in the cases titled as '*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*'; '*State by (NCB) Bengaluru versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762*' and '*Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590*', the said statement is inadmissible in evidence and cannot be read against the petitioner. Even otherwise, the recovery stands effected from the accused arrested at the spot. He, thus, contends that the petitioner deserves the concession of anticipatory bail.

4. Mr. Vikrant Pamboo, DAG, Haryana, appearing on behalf of the State, on the other hand, submits that one other case under the NDPS Act bearing FIR No.742 dated 15.06.2022 under Section 21 of the NDPS Act,

has been granted the concession of anticipatory bail by this Court. However, in terms of the judgment passed by the Hon'ble Supreme Court in '*The State of Haryana versus Samarath Kumar, Criminal Appeal No.1005 of 2022 (arising out of Special Leave Petition (Crl.) No. 6575 of 2021) with Criminal Appeal No.1006 of 2022 (arising out of Special Leave Petition (Crl.) No. 6683 of 2021) decided on July 20, 2022*', the petitioner is not entitled to the grant of anticipatory bail.

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

6. Admittedly, the petitioner is not named in the FIR but in the disclosure statement of his co-accused. The Hon'ble Supreme Court in the case titled as "*The State of Haryana versus Samarath Kumar decided on July 20, 2022*, 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 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 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 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”.

7. Keeping in view the judgment in *Samarath Kumar (supra)*, since the petitioner has been named in the disclosure statement of his co-accused and is stated to have supplied the contraband to the arrested accused-Ranjit Singh, the petitioner is not entitled to the grant of anticipatory bail and therefore, the present petition is hereby dismissed.

October 12, 2022
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No