

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

CRM-M-46969-2022

Date of Decision:-17.10.2022

Naresh Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

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

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this second petition under section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.0127 dated 26.08.2022 under Sections 21(a) 22(a)/61/85 (and Section 29 added later on) of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Nehianwala, District Bathinda.

The brief facts of the case are that while the police party was on patrolling duty for checking the sale of intoxicants, at about 9.40 am a lady was seen coming from the opposite direction holding a transparent bag. On seeing the police party she became perplexed and tried to run away after throwing the said bag. She was apprehended with the help of lady police officials at the spot and on asking her name and address she disclosed her name as Parminder Kaur wife of Nirlep Singh, resident of Bhoparai Khurd, District Amritsar. Thereafter the white transparent bag thrown by her was

searched after following proper procedure and a recovery of 3.5 grams of Heroine along with 50 tablets of Tramadol Hydrochloride (Clovidol 100 tablets) was effected. Based on the aforementioned allegations the present FIR came to be registered.

Pursuant to the arrest of Parminder Kaur, her disclosure statement was recorded in which the present petitioner Naresh Kumar has been named.

The Counsel for the petitioner contends that the Petitioner was in a live in relationship with Harjit Kaur who is the real sister of Parminder Kaur, the main accused in the present case. He contends that the petitioner along with Harjit Kaur have been implicated by Parminder Kaur on the asking of the police officials against whom Harjit Kaur had filed various complaints. He contends that the petitioner has never been involved in any other case under the NDPS Act and since the recovery from the main accused is of non commercial quantity of contraband and no recovery has been effected from the petitioner, therefore, the petitioner deserves the concession of anticipatory bail. Reliance is placed on the judgment in **Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592.**

The Counsel for the State on the other hand contends that it is the second anticipatory bail petition of the petitioner, the first having been dismissed as withdrawn on 19.09.2022 and there are no change in circumstances entitling the petitioner to the grant of bail. He contends that in terms of the judgment of Hon'ble Supreme Court in **State of Haryana Vs. Samarth Kumar 2022(3) R.C.R.(Criminal) 991** the petitioner can seek the concession of regular bail on the ground that he had been named only in the disclosure statement of his co-accused and seek anticipatory bail.

He thus contends that the present petition ought to be dismissed.

I have heard counsel for both the sides at length.

Admittedly, the petitioner has been named on the disclosure statement of his co-accused Parminder Kaur who was arrested from the spot and from whose possession the contraband was allegedly recovered. The defence of the petitioner that he has been falsely implicated in the present case on account of being in a live in relationship with Harjit Kaur sister of Parminder Kaur would be a matter of adjudication during trial.

The Hon'ble Supreme court in the case of **State of Haryana Vs. Samarth Kumar 2022(3) R.C.R.(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.”*

Keeping in view the aforementioned facts and the ratio of judgment in ***Samarth Kumar's case (supra)***, I find no merit in this petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

October 17, 2022
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>