

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-46975-2022
Date of decision : 14.10.2022

Palwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Ms.Riffi Birla, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.254 dated 07.09.2022 registered under Section 15 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) (Section 29 of the NDPS Act has been added later on) at Police Station City-I Abohar, District Fazilka.

Learned counsel for the petitioner has submitted that in the present case no recovery has been effected from the present petitioner and the alleged recovery of 92 kgs. of poppy husk has been effected from the co-accused Surji Singh. It is submitted that the petitioner has not been named in the FIR and is sought to be implicated on the basis of disclosure statement of the co-accused Surjit Singh. It is further submitted that the petitioner is neither the driver nor the owner of the canter in which the narcotic drug was being allegedly transported from Rajasthan. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case titled as “*Tofan Singh vs. State of Tamil Nadu*”

reported as **(2021) 4 SCC 1** to contend that the disclosure statement made before the officer under the NDPS Act is not admissible in evidence and thus, the petitioner deserves the concession of anticipatory bail.

Learned State counsel, on the other hand, has opposed the present petition for anticipatory bail and has submitted that the recovery in the present case from Surjit Singh is of 92 kgs. of poppy husk which falls under the ambit of commercial quantity as the commercial quantity stipulated for poppy husk starts from 50 kgs. and thus, the bar under Section 37 of the NDPS Act would apply. It is further submitted that said Surjit Singh has, in his disclosure statement, specifically named the present petitioner and has stated that he used to sell poppy husk to the present petitioner and one Baggu Singh and that out of the present recovery of 92 kgs. of poppy husk, he had to supply poppy husk weighing 46 kgs. to the present petitioner and the remaining 46 kgs. to Baggu Singh i.e., co-accused. It is further submitted that in view of the latest judgment of the Hon'ble Supreme Court in ***"The State of Haryana vs. Samarth Kumar"*** reported as **2022 LiveLaw (SC) 622**, the petitioner does not deserve the concession of anticipatory bail and in case, the concession of anticipatory bail is granted to the petitioner, then, the same would cause serious prejudice to the case of the prosecution.

This Court has heard learned counsel for the parties and has gone through the paper-book.

The Hon'ble Supreme Court in ***Samarth Kumar's case (supra)*** has held as under: -

"Leave granted.

2. *Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at*

Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.

3. *Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.*

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 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."*

A perusal of the above order would show that the High Court had granted the concession of pre-arrest bail to the respondents on the ground that no recovery was effected from the respondents therein (accused) and that they have been implicated on the basis of the disclosure statement of one Dinesh Kumar. Even in the said case, reliance had been placed upon the judgment of the Hon'ble Supreme Court in ***Tofan Singh's case (supra)***. In the said case, it was also the argument of the respondents therein (accused) that the respondents have been granted the concession of regular bail after the charge-sheet had been filed and thus, nothing survived in the appeal but the Hon'ble Supreme Court, however, rejected the said argument and observed that the order granting regular bail was in pursuance of the anticipatory bail granted by the High Court and thus, it could not be said that the appeal had been rendered infructuous. It is further observed that the benefit of the judgment of the Hon'ble Supreme Court in ***Tofan Singh's case (supra)*** can perhaps be taken at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial and to grant anticipatory bail in such a case is not warranted and thus, the order of the High Court granting anticipatory bail was set aside.

The case of the present petitioner squarely falls within the four corners of the above-said judgment and the recovery effected from the co-accused of the petitioner Surjit Singh is 92 kgs. of poppy husk which would fall within the ambit of commercial quantity. The co-accused of petitioner namely, Surjit Singh has specifically nominated the present petitioner as

It has been recorded in paragraph 5 of the order dated 20.09.2022 that co-accused Surjit Singh had specifically stated that he used to sell poppy husk to the present petitioner as well as co-accused Baggu Singh and out of 92 kgs. of the poppy husk, which have been recovered from Surjit Singh in the present case, poppy husk to the extent of 46 kgs. were to be supplied to the present petitioner and the balance of 46 kgs. were to be supplied to Baggu Singh. The correctness of the abovesaid observations made in the order dated 20.09.2022 has not been disputed before this Court. No case of malafide has been made out by the petitioner either against the police officials or against co-accused Surjit Singh so as to show that the present petitioner has been falsely implicated. The custodial interrogation of the petitioner is necessary in order to complete the chain of events and to find out as to who all are involved in the present case. In case, the concession of anticipatory bail is granted to the petitioner, then, the case of the prosecution would be prejudiced.

Keeping in view the above said facts and circumstances as well as the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana vs. Samarth Kumar's (supra)*, the present petition for anticipatory bail is dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

October 14, 2022

Davinder Kumar

**(VIKAS BAHL)
JUDGE**

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No