

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-48463-2022

Date of decision: 28.10.2022

Gurkamal

.....Petitioner

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Amritpal Singh Gill, Advocate
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

Mr. P.S. Ahluwalia, Advocate
for the victim.

NAMIT KUMAR, J.

This is a petition filed under Section 438 Cr.P.C. Seeking anticipatory bail in a case bearing FIR No.222 dated 19.09.2022 under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 18-B, 22, 22-B and 29 of NDPS Act added later on) registered at Police Station Special Task Force, STF Wing, Ludhiana.

The case of the prosecution is that ASI Sukhdev Singh had received secret information that one Manoj Kumar is coming on his Innova car no. PB-10-AU-0770, who shall go towards Gaushala Laddowal. This car may contain opium and other intoxicating substance. Additionally information was also received that it may be possible that some body has planted intoxicating substances in the car of Manoj Kumar. Accordingly, information under Section 42 of NDPS Act was sent to AIG, Ludhiana and then ruqa was sent for registration of FIR. FIR was registered and naka was

set up. Manoj Kumar was apprehended and naka inquiry was made from him. During preliminary inquiries, it was found that in the car of Manoj Kumar, one Mukesh Kumar alias Khali had planted intoxicating substances in the window of driver seat. He had earlier taken car from Manoj Kumar. From Innova car 500 grams opium and 180 intoxicating tablets were recovered which actually belongs to Mukesh Kumar @ Khali. Mukesh Kumar was nominated in the present case under Section 29 of NDPS Act and apprehended on 19.09.2022 itself. On 21.09.2022 from the interrogation and investigation of Mukesh Kumar, it came out that actually petitioner-Gurkamal Singh alias Elu is involved in the whole incident and he was also nominated in the present case under Section 29 of the NDPS Act and a special report was sent under Section 57 of the NDPS Act. This Mukesh Kumar alias Khali during investigation has clearly named that petitioner-Gurkamal Singh alias Elu had instigated him to implicate Manoj Kumar alias Monu in a false case of intoxicating substance. It was also disclosed by said Mukesh Kumar alias Khali that he borrowed the car from Manoj Kumar on Mahashivratri on March, 2022 and on that day itself he planted this Innova car. For these reasons as mentioned above, petitioner-Gurkamal Singh is needed in the present case.

Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case. He contends that his name was not there in the FIR and has been nominated by the co-accused, namely, Manoj Kumar, who later on has been let out. He further submits that the disclosure statement of the co-accused is inadmissible and therefore, the petitioner be granted the concession of pre-arrest bail.

Notice of motion.

Mr. Adhiraj Singh, A.A.G., Punjab puts in appearance and accepts notice on behalf of the respondent-State also, Mr. Preetinder Singh Ahluwalia, Advocate puts in appearance and filed his *Vakalatnama* on behalf of the victim, namely, Manoj Kumar and have opposed the grant of pre-arrest bail to the petitioner and submit that the petitioner tried to plant the narcotics through Mukesh Kumar @ Khali in the Innova car of one another person, against whom secret information was received.

Learned State counsel 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 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.

He further submits that apart from the present case, the petitioner is also involved in various other cases, details thereof are as under:-

1. FIR No.177 dated 06.11.2017 under Section 25 Arms Act, 1959 (Section 411, 473 IPC added later on) Police Station Haibowal, Police Commissionerate, Ludhiana.
2. FIR No.44 dated 10.02.2018 under Sections 324/341/506/34 of IPC, PS Division No.1, Police Commissionerate, Ludhiana.
3. FIR No.68 dated 18.03.2019 under Sections 160 & 336 of IPC and Sections 25/27/54/59 of Arms Act, 1959, Police Station Salem Tabri, Police Commissionerate, Ludhiana.
4. FIR No.54 dated 13.05.2018 under Sections 25/54/59 of Arms Act, Police Station Haibowal, Ludhiana.

- 5. FIR No.211 dated 21.08.2019 under Sections 302, 307, 148, 149, 201 IPC, Police Station Salem Tabri, Police Commissionerate, Ludhiana.
- 6. FIR No.64, dated 26.04.2020 under Sections 188, 384, 409, 420 and 120-B IPC, Police Station Jodhewal, Police Commissionerate, Ludhiana.
- 7. FIR No.0153, dated 22.10.2022 under Sections 384 & 506 IPC, Police Station Jodhewal, Police Commissionerate, Ludhiana.

However, in FIR No.211 & FIR No.64, the petitioner has been found innocent.

It has further been pointed by counsel for the victim that in FIR No.54 dated 13.05.2018, under Section 25 Arms Act, Shubham Arora, who is a Gangster, is the co-accused along with the petitioner. Similarly, in FIR No.68 dated 18.03.2019, petitioner is co-accused along with Mukesh Kumar, co-accused in the present case, who disclosed the name of the petitioner and in FIR No.44 dated 18.03.2019, the co-accused of petitioner is his younger brother.

In light of the same, even if he has been nominated on the basis of disclosure statement of the co-accused-Mukesh Kumar @ Khali, his antecedents cannot be ignored and also cannot claim the present relief only on this ground.

After hearing counsel for the parties and perusal of the records, I am of the considered view that the petitioner is involved in five more cases. 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.

(NAMIT KUMAR)
JUDGE

28.10.2022
ps-I

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