

**(106) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-49163-2022
Date of Decision: 28.10.2022**

ALISHA CHOPRA

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. R.S. Waraich (Rana), Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

JASJIT SINGH BEDI, J.

This 3rd petition under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.133 dated 22.06.2022 registered under Sections 21, 21-C, 25, 27 and 29 of the NDPS Act, 1985 read with Sections 25, 54, 59 of the Arms Act, 1959 at Police Station Special Task Force (STF) District STF Wing Mohali.

2. The brief facts of the case are that while the police party was on patrolling duty they received information that Akash Chopra alias Honey son of Sanjay Chopra was running a narcotics business and selling heroin since a long time and a number of cases had been registered against him. He had purchased property as well as cars from the proceeds of crime and if surveillance was conducted upon him then he could be apprehended on that day along with huge quantity of heroin which he was going to sell on his Activa scooter bearing No.PB-91-P-4302.

Based on the said information, the FIR in question came to be registered.

3. Accordingly, a *naka* was laid by S.I. Gurcharan Singh and when the said Akash Chopra alias Honey came on the Activa, after compliance of the provisions of the NDPS Act, 01 kg 250 grams of heroin came to be recovered from under the seat of the Activa. A small electronic weighing machine and 40 empty pouches were also recovered. Accordingly, Akash Chopra alias Honey was arrested.

During investigation Akash Chopra alias Honey confessed that he had kept more heroin in his house along with Rs.8 lakhs which he had earned from the sale of the same. He further stated that for the supply of heroin to his customers, he had kept a Fortuner Car No.CH-01AB-5400, a Swift Car No.PB-10GY-1615, an Accent Car No.HR-03J-0992, a Mercedes Car No.DL-2FHL-23, a Lancer Car No.PB-10CG-9302, a Swift Car No.PB-91-9302, an Alto Car No.PB-10GX-5835, a Gypsy No.DL-6CA-8206, a Royal Enfield Motorcycle without number, a Motorcycle Hero HF-100 No.PB-91P-7479, a Splendor Motorcycle No.PB-10ED-6393 and an Activa Scooty.

On his demarcation, 800 grams more heroin was recovered along with a sum of Rs.8 lakhs and the above-mentioned vehicles. The recovery of an illegal .32 bore pistol and 06 live cartridges of 7.65 mm was also effected from Ashok Chopra @ Honey.

He also disclosed that after selling the heroin, he used to give the cash to his wife (present petitioner) which she used to deposit in her bank account with Union Bank of India, Sector 32-A, Chandigarh Road, Ludhiana. He further stated that the petitioner was fully in connivance with him in the

sale of heroin and in his absence, the present petitioner used to supply heroin to the customers who visited his house.

Based on the aforementioned statement, the petitioner was nominated as an accused on 25.06.2022 under Section 29 of the NDPS Act.

During the course of investigation, it was revealed that the petitioner had withdrawn a sum of Rs.10 lakhs from the said bank account and absconded.

4. The learned counsel for the petitioner contends that this is the third anticipatory bail application of the petitioner. Apparently, the petitioner is not named in the FIR but only on the disclosure statement of her husband, which has no evidentiary value in view of the judgments in *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* and *State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762*. He contends that since the recovery has already been effected and nothing further is to be recovered from the petitioner, she deserves the concession of anticipatory bail.

5. On the other hand, the learned State counsel contends that both earlier petitions had been ordered to be dismissed as withdrawn after the counsel for the petitioner had argued the petition at length. There were no change in circumstances entitling the petitioner to the grant of anticipatory bail. He contends that in view of the investigation conducted so far, the petitioner does not deserve the concession of anticipatory bail, moreso, when

it has been revealed that after the registration of the FIR, Rs.10 lakhs out of the money deposited by her in the bank account was withdrawn and she has absconded. He lastly contends that in view of the judgment in **State of Haryana Versus Samarth Kumar, 2022(3) R.C.R. (Criminal) 991**, the petitioner is not entitled to the grant of anticipatory bail.

6. I have heard the learned counsel for the parties at length once again.

7. The first bail application of the petitioner was ordered to be dismissed as withdrawn after arguments had taken place on 06.09.2022. Thereafter, there was a change of counsel and the second anticipatory bail application was filed which after being argued met the same fate on 21.09.2022. The present third anticipatory bail petition has been preferred with absolutely no change in circumstance. A perusal of the facts as narrated above clearly establish that the husband of the petitioner is indulging in the sale of narcotic substances. Not only was he arrested along with huge contraband but a number of vehicles have also been recovered from his possession which he used to sell heroin. He has categorically stated that the money earned from the sale of drugs was handed over to the petitioner who deposited the same into her bank account. Pursuant to the registration of the FIR, the petitioner withdrew a sum of Rs.10 lakhs and absconded. The attending facts and circumstances *prima facie* establish the culpability of the petitioner along with that of her husband Akash Chopra @ Honey Chopra.

8. With respect to the evidentiary value of a disclosure statement, the Hon'ble Supreme Court in the case of **State of Haryana Versus Samarth Kumar** (supra), 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.

[emphasis supplied]

9. In view of the aforementioned discussion as also the judgment in the case of **State of Haryana Versus Samarth Kumar** (supra), the petitioner is not entitled to the grant of anticipatory bail and therefore the present petition is hereby dismissed.

10. It may be pertinent to mention here that this practice of filing multiple anticipatory bail petitions without any change in circumstances but often with the change of a counsel, must be curtailed and therefore, the petitioner is directed to deposit a sum of Rs.10,000/- in the account of High Court Bar Association Environment Protection Fund, immediately.

(JASJIT SINGH BEDI)
JUDGE

28.10.2022

JITESH

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