

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-50980-2022
Date of decision : 21.11.2022

Sandeep Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kehar Singh Hissowal, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 438 Cr.P.C. with the prayer to grant anticipatory bail to the petitioner in FIR no.170 dated 30.07.2022 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station City Moga, District Moga, Punjab but later on, through General Diary details, the petitioner has been nominated under Sections 29, 61, 85 of the NDPS Act.

It would be relevant to note that the petitioner had earlier filed an anticipatory bail application i.e. CRM-M-43203-2022 which had come up for hearing before this Court on 19.09.2022 and on the said date, this Court had passed the following order:-

“Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.170 dated 30.07.2022 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Moga, District Moga.

After arguing for sometime and after seeing that this Court

is not inclined to interfere in the matter and also in order to avoid an adverse order, learned counsel for the petitioner seeks permission of this Court to withdraw the present petition.

*In view of the above, the present petition is dismissed as withdrawn.
19.09.2022”*

Perusal of the above order would show that after learned counsel for the petitioner had argued for some time, and thereafter, when this Court was about to said dismiss the petition on merits, the counsel had sought to withdraw the petition in order to avoid an adverse order.

A pointed question has been put to learned counsel for the petitioner as to whether there is any subsequent exceptional change of circumstances so as to entertain the present second petition for grant of anticipatory bail. Learned counsel for the petitioner has not been able to point out any subsequent exceptional change of circumstances. It would be further relevant to note that the FIR in the present case was registered on 30.07.2022 and the petitioner was implicated in the present case vide general diary details GD no.21 dated 01.08.2022 and his anticipatory bail application was dismissed by the Special Court, Moga vide order dated 7.09.2022 and thereafter, the first anticipatory bail application filed before this Court had been withdrawn on 19.09.2022 and the present petition has been filed on 01.11.2022 i.e., after a period of more than one month from the passing of the order dated 19.09.2022 and thus, shows that the petitioner has been evading arrest.

This Court in the order dated 04.03.2022 passed in **CRM-M-9107-2022** titled as **“Bhunesh Vs. State of Haryana”**, had noticed this unfortunate tendency growing among unscrupulous litigants, of first,

is not inclined to grant the same, then withdrawing the same, in order to avoid passing of an adverse order and thereafter, within few days, without any justification, again file a second anticipatory bail. Relevant portions of the said order dated 04.03.2022 are reproduced hereinbelow:-

“xxx xxx xxx xxx

This Court is of the view that there is a stark difference between filing of subsequent/successive regular bail applications or for suspension of sentence and filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is already in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of “further custody” would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is accused of an offence for which the maximum sentence is 10 years and his first bail application, which was filed after undergoing two years of custody, has been rejected, it would be open for that person to come after a year or after a substantial period of further custody has been undergone by him and the Courts could well grant the concession of bail to the accused on the ground of “period of custody undergone”. In the subsequent regular bail applications, there could be several factors in addition to long incarceration, which could be raised for instance, it could also be shown that there was a delay in the trial or that some material witness has demolished the case of the prosecution, which would come within the meaning of changed circumstances, so as to grant the relief to the accused therein. Similar would be the position in the case of suspension of sentence. However, the case of anticipatory bail cannot be treated to be on the same pedestal.

xxx xxx xxx xxx

This Court would also like to take note of the unfortunate trend being adopted by unscrupulous litigants in which, as in the present case, the petition for anticipatory bail is argued and when the Court is about to dismiss the petition, learned counsel for the

petitioner, in order to avoid a detailed adverse order, seeks to withdraw the petition and after some days, without any justification, files a second anticipatory bail petition. The same not only wastes the time of the Court, but is also an abuse of the process of the Court and the said practice needs to be curtailed with a heavy hand and accordingly, the present second petition for anticipatory bail is dismissed with costs of Rs.50,000/-. The petitioner is directed to deposit the same with the Haryana State Legal Services Authority within a period of one month from today."

The Hon'ble Supreme Court in judgment titled as "**G.R. Ananda Babu Vs. The State of Tamil Nadu and another**", reported as **2021(1) RCR (Criminal) 843**, was pleased to observe as under: -

"Leave granted.

Heard learned counsel for the parties. This appeal takes exception to the judgment and order dated 24.11.2020 passed by the High Court of Judicature at Madras in Crl. O.P. No. 18412 of 2020, granting anticipatory bail to respondent No.2 in connection with FIR No. 153 of 2019 for the offences punishable under Sections 143, 436, 302, 307, 149 and 120B of Indian Penal Code.

The incident in question has occurred on 11.11.2019. Respondent No. 2 applied for anticipatory bail before the High Court first vide Crl. O.P. No. 32759 of 2019.

came to be rejected by a speaking order dated 20.12.2019. Despite rejection of anticipatory bail by the High Court, respondent No.2 after some gap moved another application for anticipatory bail being Crl. O.P. No. 8023 of 2020 which for reasons, cannot be discerned from the record, was heard by another judge. Nevertheless, it was rejected vide a speaking order dated 29.05.2020 and more importantly taking note of the fact that there was no change in circumstances and the investigation was still incomplete. Respondent No. 2 then moved a third anticipatory bail application being Crl. O.P. No. 18412 of 2020, which has been allowed by the impugned judgment by the same Judge, who had rejected the second anticipatory bail application, referred to above, vide order dated

24.11.2020 (impugned order).

On this occasion, the learned Judge recorded following reasons for acceding to the request for grant of anticipatory bail to respondent No.2. The same read thus:

- “(i) The date of occurrence is 11.11.2019.*
- (ii) Other 13 accused were arrested and surrendered, their confessional statements were recorded and they were released on bail.*
- (iii) 127 private witnesses were examined and their statements were recorded.*
- (iv) 12 months is over from the date of occurrence.*
- (v) Six months have passed from the date of dismissal of earlier anticipatory bail application.*
- (vi) The petitioner is aged 69 years alleged to be suffering from age related ailments and he is willing to co-operate with the investigation.”*

We have perused the status report submitted by the Investigating Officer before the High Court for consideration along with case diary, clearly indicating that custodial interrogation of respondent No. 2 is essential and the investigation is still incomplete. Nevertheless, on the third occasion, the learned Judge acceded to the request of respondent No. 2 and granted anticipatory bail, without referring to the said status report. None of the reasons cited by the learned Judge, in our opinion, can be said to be just basis to show indulgence to respondent No. 2.

As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

Accordingly, the impugned judgment and order is set aside. The Investigating Officer is free to take respondent No. 2 into custody forthwith. The appeal is allowed in the above terms. Pending applications, if any, stand disposed of.”

Keeping in the view the above said facts and the law laid down in the above said judgments, the present petition for anticipatory bail is not maintainable and deserves to be dismissed on the said ground alone. This Court however, has also considered the merits of the case hereinbelow.

Brief facts of the present case are that 1 kg heroin and Rs.10,45,800/- drug money was recovered from the possession of the accused namely Lovejit Singh @ Love, Bikram @ Honey, Ranjit Money Bhupinder Singh @ Bittu. In the present case, a disclosure statement was suffered by Lovejit Singh @ Love, who had stated that he had bought 4 kgs. heroin from Jaspreet Singh @ Jassa and sold 1 kg heroin to the present petitioner and the remaining heroin were sold by him to the customers in small quantity. On the basis of said disclosure statement, the petitioner was made an accused vide general diary details dated 29.08.2022. The plea raised by the petitioner is that the petitioner was not named in the FIR and no recovery was effected from him and he has been implicated on the basis of the disclosure statement of the co-accused Lovejit Singh @ Love and has placed reliance upon the judgment of Hon'ble Supreme Court in ***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 and thus, the petitioner deserves the concession of anticipatory bail. The said argument raised by the learned counsel for the petitioner is meritless .

The Hon'ble Supreme Court in ***The State of Haryana vs.***

Samarth Kumar, reported as ***2022 LiveLaw (SC) 622*** 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 ambit of the aforesaid judgment passed by the Hon'ble Supreme Court

1 kg heroin had been sold to the present petitioner. The said quantity would fall within the definition of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply. The custodial interrogation of the petitioner is necessary in order to recover the said 1 kg. heroin, which as per Lovejit Singh @ Love had been sold to the present petitioner and also in order to complete the chain of supply and to find out all the persons involved in the case. A perusal of the order dated 07.09.2022 would show that two other FIRs have been registered against the present petitioner under the NDPS Act and thus, the petitioner is a habitual offender and has repeatedly been indulging in committing the offences under the NDPS Act.

Keeping in view the above said facts and circumstances, the present petition deserves to be dismissed and the same is accordingly dismissed.

Nothing stated above shall be construed as a final 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.

(VIKAS BAHL)
JUDGE

November 21, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No