

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

CRM-M-51074-2022

Date of Decision: 10.11.2022

SHIVA

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. K.S. Sidhu, Advocate
for the petitioner.

Mr. Jaiteshwar Singh, Asst. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.45 dated 01.03.2022 (Annexure P-1) registered under Sections 21, 61, 85 of NDPS Act, 1985 (section 29 of NDPS Act, 1985 vide Rapat No.28 dated 01.03.2022 added later on) at Police Station Sadar, Ferozepur, District Ferozepur.

2. The brief facts of the case are that while on patrolling duty, secret information was received by the policy party that Ravinder Singh son of Tek Chand was selling heroin and was standing at the Canal Bridge near Grain Market Bare Ke and waiting for his customers. If a raid was conducted, he could be apprehended with heroin.

Based on the said information, the aforementioned FIR came to be registered against Ravinder Singh.

3. Pursuant to the registration of the FIR, Ravinder Singh was arrested and a recovery of 589 grams of heroin was effected from him. During

the course of his interrogation, he suffered his disclosure statement regarding the involvement of Anmol @ Kali @ Sunny and the present petitioner who were nominated as accused.

Thereafter, Ravinder Singh further got recovered 715 grams of heroin along with Rs.50,000/- stated to be drug money.

4. The learned counsel for the petitioner contends that the petitioner is a young boy of the age of 20 years and has only been named in the disclosure statement of Ravinder Singh. No recovery whatsoever has been effected from him. He has clean antecedents and none of the 13 prosecution witnesses have been examined so far. The trial of the present case is not likely to be concluded in the near future. Therefore, the petitioner deserves the concession of bail.

5. On the other hand, the learned State counsel contends that the petitioner does not deserve the concession of bail looking at the seriousness of the allegations. He however, admits that the petitioner is named in the disclosure statement of his co-accused Ravinder Singh and has clean antecedents with no other case registered against him. He also admits the fact that none of the 13 prosecution witnesses have been examined so far.

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

7. The Hon'ble Supreme Court and this Court in the cases of 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 has held that the disclosure statement made to the police in custody naming a co-accused has no evidentiary value.

8. 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 the instant case the petitioner is named in the disclosure statement of his co-accused. He is a first-time offender and no recovery has been effected from him. Further, none of the 13 prosecution witnesses have been examined so far and therefore, the Trial in the present case will not conclude anytime soon. Therefore, the further incarceration of the petitioner is not required as a *prima facie* satisfaction under Section 37 NDPS can be recorded in the aforementioned factual scenario.

10. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Shiva son of Sarup Singh is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

10.11.2022

JITESH

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