

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56256-2022 (O&M)
Date of Decision: 14.12.2022

RAJ KUMAR @ RAJ SINGH @ RAJU

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rahul Arora, Advocate
for the petitioner.

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

JASJIT SINGH BEDI, J.

CRM-46519-2022

The present application has been filed by the applicant-petitioner for placing on record the certified copy/photocopy of order dated 11.11.2022 passed by the Judge, Special Court, Ferozepur in BA No.3131/2022.

For the reasons mentioned in the application, the same is allowed and the the certified copy/photocopy of order dated 11.11.2022 passed by the Judge, Special Court, Ferozepur in BA No.3131/2022 is taken on record.

CRM-M-56256-2022

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.0121 dated 12.10.2022 (Annexure P-1) registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 NDPS Act added later on

vide Rapat No.16, dated 15.10.2022) at Police Station City Lakho Ke Behram, District Ferozepur.

2. The brief facts of the case are that while the police party was on patrolling duty then one vehicle make Innova, white colour bearing Registration No.PB-30R-8952 came from the side of Ferozepur which on being signalled to stop was turned towards a different direction. On being stopped, two Hindu gentlemen were found sitting inside. On inquiry they disclosed their names as Sona Singh son of Sikander Singh and the other person disclosed his names as Amarjeet Singh alias Sonu son of Mukhtiar Singh. During the course of search of the vehicle, 16200 intoxicating tablets were recovered.

During interrogation Sona Singh disclosed that the intoxicating tablets which had been recovered from him had been taken from Raju son of not known. The house of Raju was raided and he was not found present there but his son Rahul disclosed that the name of his father was Raj Kumar alias Raju son of Balbeer Singh (petitioner). Thereafter, Section 29 of the NDPS Act was added to the FIR vide G.D. No.016 dated 15.10.2022 (Annexure P-2).

3. The learned counsel for the petitioner contends that the petitioner has been nominated on the basis of the disclosure statement of his co-accused in police custody which is inadmissible in evidence. Reliance is placed on 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. Since the recovery already stands effected, the petitioner ought to be granted the concession of anticipatory bail as he is ready and willing to join investigation. Even otherwise, the Hon'ble Supreme Court in the case of Prabhulal Versus Central Bureau of Narcotics, SLP No.6744/2022, decided on 11.10.2022 has granted the concession of anticipatory bail to an accused therein even after the judgment in State of Haryana Versus Samarth Kumar, 2022(3) R.C.R. (Criminal) 991.

4. The learned State counsel on the other hand contends that as per the judgment in the case of State of Haryana Versus Samarth Kumar (supra) the petitioner was not entitled to the grant of anticipatory bail.
5. I have heard the learned counsel for the parties at length.
6. 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]

7. This Court in the case of **Gurpreet Singh Versus State of Punjab, CRM-M-44196-2022, decided on 23.09.2022** had dismissed the

anticipatory bail petition of the petitioner relying on the judgment in the case of **State of Haryana Versus Samarth Kumar** (supra). An SLP No.9680/2022 was preferred against the said order and the said SLP was dismissed by the Hon'ble Supreme Court vide order dated 07.11.2022. The said order is reproduced below:-

*“We are not inclined to interfere with the impugned judgment.
The special leave petition is dismissed.
Pending applications stand disposed of.”*

[emphasis supplied]

The order of the Hon'ble Supreme Court in **Prabhulal's** case is as under:-

“Learned counsel for the petitioner submits that except to the statement of Chowkidar who has stated that the contraband was uploaded in the truck by the petitioner there is no other supporting evidence on record in reference to which the petitioner has been implicated in the commission of Crime No.08/2021 under Section 8/15, 25, 29 of the NDPS Act registered at Police Station CBN, Neemuch.

Issue Notice, returnable on 15.11.2022.

Dasti, in addition, is permitted.

Let standing counsel for the Central Bureau of Narcotics be served, in addition.

In the meanwhile, there shall be stay on arrest of the petitioner in reference to Crime No.08/2021 registered at police station CBN, NEEMUCH, Distt. Neemuch, M.P.”

[emphasis supplied]

A perusal of the above order would reveal that the statement of a co-accused had been recorded that the contraband was uploaded in the truck

by the petitioner therein. The said order does not reveal the exact role played by the petitioner therein and whether the accused had knowledge about what he was uploading onto the truck.

In the present case, however as per the disclosure statement of the arrested accused Sona Singh, it was the petitioner-Raj Kumar @ Raj Singh @ Raju who had allegedly supplied 16200 tablets to the arrested accused. Therefore, the order in Prabhulal's case cannot come to the aid of the petitioner. Even otherwise, the order in **Prabhulal's** case is an interim order subject to confirmation.

8. A perusal of the judgment in **State of Haryana Versus Samarth Kumar** (supra) is a more detailed judgment which has discussed **Toofan Singh's** case in some detail. The order in **Prabhu Lal's** case (supra) on the other hand is an interim order subject to confirmation.

9. In view of the aforementioned discussion, the petitioner is not entitled to the grant of anticipatory bail and therefore, this petition is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

14.12.2022

JITESH

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