

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55539-2022
Date of Decision: 06.12.2022

VIJAY SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.501 dated 05.11.2022 (Annexure P-1) registered under Sections 15/29 of the Narcotic Drugs and Psychotropic Substances Act No.61 of 1985 at Police Station Ellenabad, District Sirsa, Haryana.

2. The brief facts of the case are that while the police party was on patrolling duty, a person was seen coming carrying a black coloured polythene wrapper in his right hand. On seeing the police party, he became perplexed and started walking at a brisk pace in a different direction. On being apprehended, he disclosed his name as Gurbachan Singh alias Gachi son of Bakshish Singh. After complying with the provisions of Section 50 of

the NDPS Act, he was searched and he was found to be in possession of 1.700 kilograms of Chura Doda Post.

The name of the petitioner was disclosed by Gurbachan Singh @ Gachi during the course of investigation who stated that Vijay Singh (petitioner) had supplied him the contraband to sell and profit was to be shared amongst them.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR but only in the disclosure statement of his co-accused. The said disclosure statement 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. He contends that the judgment in State of Haryana Versus Samarth Kumar, 2022(3) R.C.R. (Criminal) 991 would not apply to the present case because in the said case, the recovery was of commercial quantity and in the present case, the recovery from the arrested accused was of non-commercial quantity of contraband. Therefore, the petitioner deserves the concession of anticipatory bail.

4. The learned State counsel while opposing the grant of anticipatory bail to the petitioner contends that in terms of the judgment in State of Haryana Versus Samarth Kumar (supra), the petitioner would not be entitled to the grant of anticipatory bail. Merely because the recovery from

Gurbachan Singh alias Gachi was of non-commercial quantity of contraband does not mean that on the arrest of the petitioner only non-commercial quantity of contraband would be recovered. The principle of law as laid down in **State of Haryana Versus Samarth Kumar** (supra) does not draw a distinction between the recovery of commercial/non-commercial quantity from the principal accused to be a determining factor to the grant of anticipatory bail or rejection thereof of an accused named in a disclosure statement.

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. A perusal of the aforementioned judgment would clearly show that though the recovery from the principal accused was of commercial quantity of contraband, no distinction whatsoever has been drawn by the Hon'ble Supreme Court with respect to the recovery from the principal accused being of commercial/non-commercial quantity being a determining factor for the grant of bail to the person named in the disclosure statement.

8. 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 an accused who had been named in a disclosure statement of the arrested accused. 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.

9. Thus, it is a settled principle of law that anticipatory bail cannot be granted to an accused who has been named in the disclosure statement of the arrested accused.

10. In view of the aforementioned discussion, I find no merit in the present petition and the same is therefore dismissed.

(JASJIT SINGH BEDI)
JUDGE

06.12.2022

JITESH

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