

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

**CRM-M No.58880 of 2022 (O&M)
Date of decision : 20.12.2022**

Amritpal Singh @ Peter

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

The petitioner has prayed for grant of pre-arrest bail in FIR No.146 dated 01.07.2022 registered under Sections 21, 22, 29 of the NDPS Act, 1985 and Section 25(6) (7) of Arms Act, 1959 at Police Station City Taran Taran.

As per the case of the prosecution Harjit Singh and Gurbhej Singh were apprehended and recovery of 350 grams of Heroin was effected from them. In their disclosure statement they nominated the present petitioner namely Amritpal Singh @ Peter to be the source of the contraband.

Counsel for the petitioner relies upon *Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1* to submit that the disclosure suffered by co-accused being a weak piece of evidence cannot be relied upon to nail the petitioner. He further submits apart from disclosure statement of Harjit Singh and Gurbhej Singh there is nothing on record to link the

petitioner to the present case.

Per contra, learned State counsel submits that it is a case involving commercial quantity. It is the petitioner who has been stated to be the supplier of the contraband by the co-accused. Thus the custodial interrogation of the petitioner is required to un-earth the true facts and the further source of the contraband involved. He further submits that so far as law laid down in ***Tofan Singh's case (supra)*** is concerned, the same cannot be considered at the stage of grant of pre-arrest bail in terms of dictum of law laid down in ***State of Haryana Vs. Samarth Kumar (2022) 3 RCR Cri.991***.

I have heard learned counsel for the parties and have gone through the records of the case.

The question thus arises is as to whether concession of dictum of law laid down in the case of ***Tofan Singh's case (supra)*** can be considered at the time of consideration of pre-arrest bail claimed by the petitioner. The Apex Court in the case of ***Samarth Kumar's case (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***.*

“xxx xxx xxx

*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 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.”

Thereafter another matter involving nomination of an accused on the disclosure of co-accused came before the Apex Court in the case of ***Prabhulal Vs. Central Bureau of Narcotics*** in Special Leave to Appeal (Criminal) No.6744/2022. Apex Court vide order dated 11.10.2022 granted interim protection to the petitioner therein. However, admittedly the same finally resulted in dismissal of the pre-arrest bail vide order dated 14.12.2022.

In view of the aforesaid facts and the ratio of law laid down by the Apex Court in the case of ***Samarth Kumar's case (supra)***, it can be safely concluded that the benefit of ratio of law laid down in the case of ***Tofan Singh's case (supra)*** cannot be granted to an accused while considering pre-arrest bail.

In view of the aforesaid settled law, no ground to grant pre-arrest bail to the petitioner is made out. Consequently, the same is ordered to be dismissed.

Needless to say nothing recorded hereinabove should be construed as expression on merits of the case.

(PANKAJ JAIN)
JUDGE

20.12.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No