

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

**CRM-M No.57201 of 2022 (O&M)
Date of decision : 20.12.2022**

Sudhir Kumar @ Manda

..... Petitioner

versus

State of Haryana & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Gurbir Singh Sandhu, Advocate
for the petitioner.

Mr. Sumit Jain, Addl.AG, Haryana.

PANKAJ JAIN, J. (ORAL)

The petitioner has prayed for grant of pre-arrest bail in FIR No.531 dated 26.11.2022 registered under Section 21(B) of the NDPS Act, 1985 at Police Station Ellenabad, District Sirsa, Haryana.

Learned counsel for the petitioner submits that the name of the petitioner has figured during interrogation of co-accused namely Suhail Khan and Kuldeep Singh from whom 10 grams of Heroin was recovered. They have disclosed that the source of such contraband is the present petitioner. He further submits that apart from the disclosure statement suffered by aforesaid co-accused, there is nothing on record to yoke the petitioner to the present offence and the same cannot be relied upon in view of law laid down by Apex Court in ***Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1.***

Per contra, learned State counsel submits that the aforesaid contention already stands examined by the lower Court wherein the

prayer made by the petitioner seeking pre-arrest bail has been dismissed relying upon ratio 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.

20.12.2022

Pooja sharma-I

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned

Whether Reportable :

Yes

No