

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-57812-2022
Date of decision : 12.12.2022

Narinder Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kanwar Arun Singh, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

This is the first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.132 dated 08.10.2022 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) (Sections 29/61/ 85 of the NDPS Act added later on) at Police Station Koom Kalan, District Police Commissionerate, Ludhiana.

Learned counsel for the petitioner has submitted that no recovery has been effected from the present petitioner and the petitioner has been involved in the present case on the basis of disclosure statement of co-accused Sukhwinder Singh @ Sukhi, from whom recovery of 32 grams of heroin has been effected, on the allegation that it is the petitioner who was selling the heroin to the said co-accused. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in “*Tofan*

a disclosure statement made before the police under the NDPS Act is inadmissible in evidence.

This Court has heard learned counsel for the petitioner and has gone through the paper book.

The Hon'ble Supreme Court in “***The State of Haryana vs. Samarth Kumar***” reported as ***2022 LiveLaw (SC) 622***, has held as under: -

“Leave granted.

2. *Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.*

3. *Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.*

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 vs. 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 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 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.”*

A perusal of the above order would show that the High Court had granted the concession of pre-arrest bail to the respondents on the ground that no recovery was effected from the respondents therein (accused) and that they have been implicated on the basis of the disclosure statement of one Dinesh Kumar. Even in the said case, reliance had been

case (supra). In the said case, it was also the argument of the respondents therein (accused) that the respondents have been granted the concession of regular bail after the charge-sheet had been filed and thus, nothing survived in the appeal but the Hon'ble Supreme Court, however, rejected the said argument and observed that the order granting regular bail was in pursuance of the anticipatory bail granted by the High Court and thus, it could not be said that the appeal had been rendered infructuous. It is further observed that the benefit of the judgment of the Hon'ble Supreme Court in ***Tofan Singh's case (supra)*** can perhaps be taken at the time of arguing the regular bail application or at the time of final hearing after the conclusion of the trial and to grant anticipatory bail in such a case is not warranted and thus, the order of the High Court granting anticipatory bail was set aside.

It is not in dispute that as per the case of the prosecution, co-accused Sukhwinder Kaur @ Sukhi was arrested and from her, recovery of 32 grams of heroin was effected and she had nominated the present petitioner in her disclosure statement as being the person who had sold the said heroine to said Sukhwinder Kaur @ Sukhi. Thus, the law laid down by the Hon'ble Supreme Court in ***Samarth Kumar's case (supra)*** would apply in the present case. The custodial interrogation of the petitioner is necessary in order to complete the entire chain of events and also to enquire about the fact as to what is the source from where the petitioner purchased the heroin so as to sell it to Sukhwinder Kaur @ Sukhi, from whom it has been recovered. The prosecution is to be given a free hand to enable them to collect all the possible evidence against all the persons involved, including the present petitioner who is the supplier as per the disclosure statement of the co-accused. Moreover, in the present case, no case of any false

implication, at the behest of the police is made out and no malafide has been alleged against co-accused Sukhwinder Kaur @ Sukhi who is stated to have named the present petitioner in her disclosure statement as being the supplier.

Keeping in view the above said facts and circumstances, the present petition for grant of anticipatory bail is dismissed.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

December 12, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No