

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

**CRM-M No.57942 of 2022 (O&M)
Date of decision : 20.12.2022**

Manjeet Singh

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. V.B.Godara, 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.248 dated 09.05.2022 registered under Sections 21(b) & 29 of the NDPS Act, 1985 at Police Station Tosham, District Bhiwani.

Learned counsel for the petitioner submits that one Mandeep was arrested from whose possession recovery of 25.32 grams of heroin was effected. Mandeep in his disclosure statement implicated Sukhvinder as a person from whom the Narcotic drug was purchased. After arrest of Sukhvinder, present petitioner was nominated in disclosure statement suffered by Sukhvinder as the primary source of the contraband. He further submits that the aforesaid Sukhvinder already stands admitted to regular bail granted by the Court below vide order dated 16.11.2022 and there is nothing against the petitioner apart from the disclosure made by Sukhvinder to link him to the offence alleged under the present FIR.

Reliance is being placed upon *Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1* to contend that disclosure made by Sukhvinder-co-accused cannot be relied upon to drive home offence against the petitioner.

Per contra, learned State counsel relies upon ratio of law laid down in *State of Haryana Vs. Samarth Kumar (2022) 3 RCR Cri.991* to submit that the benefit extendable under the ratio of law laid down in the case of *Tofan Singh's case (supra)* cannot be relied upon at the time of consideration of pre-arrest bail.

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