

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

**CRM-M No.58145 of 2022 (O&M)
Date of decision : 20.12.2022**

Pawan Kumar

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Dheeraj Narula, 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.511 dated 25.09.2022 registered under Sections 15 & 27-A of the NDPS Act, 1985 at Police Station Fatehabad, District Fatehabad (Haryana).

Learned counsel for the petitioner submits that the name of the petitioner does not figure in the FIR. Recovery of 14 kg. of Poppy husk was effected from one Sukhwinder Singh @ Gollu who already stands admitted to regular bail vide order dated 01.11.2022 passed by the Courts below. Said Sukhwinder Singh @ Gollu is stated to have suffered disclosure statement wherein he has nominated the petitioner as the source of contraband. Reliance has been placed upon ***Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1*** to submit that such disclosure made by the co-accused before the police authorities cannot be said to be a cogent evidence against the petitioner.

Per contra, learned State counsel submits that in terms of mandate of ***State of Haryana Vs. Samarth Kumar (2022) 3 RCR Cri.991*** the aforesaid plea raised by learned counsel for the petitioner cannot be considered at the time of grant 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