

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-59659 of 2022(O&M)

Date of decision : December 21, 2022

Manjit Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :-Mr. Pawan Girdhar, Advocate
for the petitioner.

Mr. Arun Gupta, Assistant Advocate General, Punjab.

PANKAJ JAIN, J. (ORAL)

At the outset, learned counsel for the petitioner submits that inadvertently incorrect copy of the FIR was appended to the petition as Annexure P-8. He submits that he has prepared an application for placing on record correct copy. However, the same could not be filed. The application has been accepted in the Court. The Registry is directed to number the same and tag it at an appropriate place.

The application for placing on record the correct copy of the FIR is allowed.

Correct copy of the FIR No.62 dated 10.09.2022 is allowed to be taken on record as Annexure P-8.

CRM-M-59659-2022(O&M)

Prayer in the present petition is for pre-arrest bail in FIR No.91 dated 22.11.2022 for the offences punishable under Sections 15-B and 18B of the NDPS Act, 1985 (Sections 25 and 29 of the NDPS Act were added later on) (hereinafter referred to as the 'Act') registered at Police Station Kheri Nodh Singh, District Fatehgarh Sahib.

Learned counsel for the petitioner submits that name of the petitioner has figured in the disclosure statement suffered by Gurpreet Singh @ Gopi who was driving the truck owned by the petitioner. As per the case of the prosecution, contraband of 10 kg poppy husk and 500 grams opium were recovered from Gurpreet Singh @ Gopi and Kuldeep Singh @ Keepa. He submits that disclosure statement suffered by Gurpreet Singh @ Gopi itself raises serious questions with respect to truthfulness thereof. It has been submitted that the disclosure statement made by Gurpreet Singh @ Gopi is factually incorrect and thus, the same cannot be relied upon to implicate the petitioner. Two facts that have been pointed out are:

1. Gurpreet Singh @ Gopi has stated that he has been employed as a driver of the vehicle for last one year whereas Annexure P-5 would show that the vehicle itself was purchased on 14.9.2022 and was registered only on 19.10.2022 (Annexure P-7).

2. The fact with respect to involvement of the petitioner in the earlier FIR

which relates to recovery of contraband from the other truck owned by the petitioner is also factually incorrect as is evident from the FIR (Annexure P-8) as the petitioner was never named in the said FIR.

I have heard learned counsel for the petitioner and have gone through the record of the case.

The question involved in the present case at this stage would be as to whether the falsity or truthfulness of the disclosure statement can be appreciated at this stage.

Secondly, as to whether the benefit of **Tofan Singh Vs. State of Tamil Nadu 2021 (4) SCC 1** can be extended at this stage as counsel for the petitioner has emphatically argued that ratio of law laid down in **State of Haryana Vs. Samrath Kumar reported as 2022(3) RCR (CrI.) 991** would not be applicable in the present case as the same was a case involving commercial quantity wherein rigors of Section 37 of the Act were attracted.

In the considered opinion of this Court from the perusal of the **State of Haryana Vs. Samrath Kumar's case (supra)** it is clear that Apex Court has not made out any distinction viz-a-viz quantity of the contraband. Paras 8 and 9 thereof read as under:-

“8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. 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.”

In view of the ratio of law laid down by the Apex Court, benefit of **Tofan Singh's case (supra)** cannot be extended to the petitioner at this stage. Further more the question as to whether the disclosure statement is truthful or not cannot be a subject matter at this stage.

In view of the dictum of law laid down in **Gurbaksh Singh Sibbia vs. State of Punjab, 1980(2) SCC 565** Apex Court has held that :-

“..That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail....”

Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of**

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. “

The nature and the seriousness of the allegations levelled against the petitioner and his conduct are the relevant factors for the adjudication of the present petition.

In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner.

Consequently, the same is dismissed.

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

(PANKAJ JAIN)
JUDGE

December 21, 2022
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Whether speaking/reasoned	Yes
Whether Reportable :	No