

CRM-M-34-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34-2023 (O & M)

Date of decision: 21.02.2023

Gursewak Singh @ Sewak

... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. J.K. Singla, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.304 dated 30.06.2022 under Sections 15, 27-A, 29 of the NDPS Act, registered at Police Station City Mandi Dabwali, District Sirsa.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Surender Singh alias Babbi son of Angrej Singh and Hargobind Singh @ Ghilla son of Hardev Singh, owner and truck driver of truck No.HR 57A-7298, namely, Gursewak Singh @ Sewak (petitioner), Brezza car No.HR-25H-2885 and truck conductor name not known alongwith others did the business of selling doda post. They were bringing doda post in a huge quantity from Madhya Pradesh in a truck and would unload the truck at village Desujodha in the nearby fields and by concealing it in the fields they would further sell to

alias Babbi filled doda post in the said truck bearing No.HR57A-7298 and piloting the truck was a Brezza car bearing No.HR-25H-2885. The doda post was brought to village Desujodha and was hidden in a room in the fields of Harjeet Singh and that land was taken on lease from Hargobind Singh @ Ghilla. Surender Singh @ Babbi and Hargobind Singh @ Ghilla were sitting together in the front of the room built in the fields waiting for the customers and trying to sell the doda post. If the place was raided, then the persons could be apprehended.

Based on the information, the FIR was registered, a raid was conducted and a recovery of 1050 Kgs. of doda post was effected.

During the course of investigation, Surender Singh @ Babbi, Hargobind Singh @ Ghilla, Gurpreet Singh and Irfan Khan @ Khan @ Furkan had disclosed that the petitioner was also involved in trafficking of the contraband.

Based on the said statement, the petitioner was arrayed as an accused.

3. The learned counsel for the petitioner contends that the petitioner has been nominated on the basis of the disclosure statement of his co-accused. Such a disclosure statement is a weak type of evidence and cannot be used against the accused. Even otherwise, the admissibility and veracity of the said statement would be tested during the course of Trial. As the recovery of the contraband had already been effected from the co-accused Surender Singh @ Babbi and Hargobind Singh @ Ghilla and nothing was to be recovered from the present petitioner, the custodial

concession of anticipatory bail. Reliance is placed on the judgments in *Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Versus Union of India, 2021(1) RCR (Criminal) 704, Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954 and State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762.*

4. The learned State counsel while opposing the grant of anticipatory bail to the petitioner contends that in terms of the judgment in *State of Haryana Versus Samarth Kumar, 2022(3) R.C.R. (Criminal) 991,* the petitioner would not be entitled to the grant of anticipatory bail. He also contends that the petitioner is an accused in another FIR No.77/2021 under Sections 21-B, 61, 85 of the NDPS Act registered at Police Station STF SAS Nagar, Mohali, Punjab.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of *State of Haryana Versus Samarth Kumar (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.

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 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.

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.”

(emphasis supplied)

7. This Court in the case of Gurpreet Singh Versus State of

Punjab, CRM-M-44196-2022, decided on 23.09.2022 had dismissed the

anticipatory bail petition of an accused who had been named in a disclosure statement of the arrested accused. An SLP No.9680/2022 was preferred against the said order and the said SLP was dismissed by the Hon'ble Supreme Court vide order dated 07.11.2022. The said order is reproduced hereinbelow:-

*“We are not inclined to interfere with the impugned judgment.
The special leave petition is dismissed.
Pending applications stand disposed of.”*

Similarly, in the case of **Pargat Singh Versus State of Punjab, CRM-M-32630-2022, decided on 06.09.2022,** this Court had declined anticipatory bail to the accused therein vide order dated 06.09.2022. An SLP No.11835/2022 was preferred against the said order and the said SLP was dismissed by the Hon'ble Supreme Court vide order dated 16.12.2022. The said order is reproduced hereinbelow:-

*“Learned counsel for the petitioner seeks liberty to
withdraw the special leave petition. Permission as sought
for is granted.*

*Special Leave Petition stands dismissed as withdrawn.
Pending application(s), if any, stand disposed of.”*

8. Thus, it is apparent that anticipatory bail cannot be granted to an accused on the ground that he has only been nominated as an accused on the basis of a disclosure statement of his co-accused. Therefore, the judgment in **Toofan Singh's (supra)** case may be relevant for the grant of regular bail or at the time of final adjudication of the Trial. In addition, the petitioner is also an accused in another FIR No.77/2021 under Sections 21-B, 61, 85 of the NDPS Act registered at Police Station STF SAS Nagar,

Mohali, Punjab, which also does not entitle him to the grant of anticipatory bail.

9. In view of the aforementioned discussion, I find no merit in the present petition and the same is therefore dismissed.

February 21, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No