

Date of decision: 06.01.2023

.....Petitioner

.....Respondent

Mr. Vikrant Pamboo, DAG, Haryana.

Briefly stated the facts of the case are that on 06.10.2022; a police party headed by SI Radha Krishan, on the basis of secret information, apprehended co-accused-Vinod Kumar son of Ram Sawroop and Rajesh @ Kakka son of Kishori Ram, both residents of Killa Mohalla, Tohana, Tehsil Tohara, District Fatehabad, within the area of Police Station City, Tohana. After conducting legal proceedings, search was conducted and recovery of 45 grams of *heroin* and currency notes worth Rs.2200/- was effected from co-accused, Vinod Kumar, whereas, recovery of a computer-scale was effected from co-accused Rajesh Kumar, in the presence of Dr. Naveen Kumar, VS, GVH, Jakhal. Present case under Section 21 (b) of the NDPS Act was registered. During interrogation, co-accused Vinod Kumar and Rajesh @ Kaka suffered their respective disclosure-statements admitting guilt and disclosing that they had

purchased recovered contraband from applicant/accused-Rahul. Sections 27-A/29 of the NDPS Act have been added. After completion of investigation report under Section 173 Cr.P.C. has been presented against co-accused Vinod Kumar and Rajesh Kumar.

Learned counsel for the petitioner submits that against the petitioner a concocted story has been made and he is innocent and has been falsely implicated in the present case. He further submits that he was not named in the FIR and has been nominated as an accused on the basis of disclosure statements of co-accused, namely, Vinod Kumar and Rajesh Kumar, made before the Police which is not admissible in law. He further submits that the recovery, if any, has been effected from Vinod Kumar and Rajesh Kumar and his custodial interrogation is not required and he is ready and willing to join the investigation.

Learned State counsel on the strength of advance copy placed reliance on the law laid down by the Hon'ble Supreme Court in the case of 'The State of Haryana versus Samarth Kumar' reported as 2022 (3) RCR (Criminal) 991 and he refers to para 4 to 7 of the judgment which is reproduced 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 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 respondents in the second of these appeals is also a habitual offender. 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.

6. 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.
7. 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.

I have heard the counsel for the parties and perused the record.

The learned trial Court, vide orders dated 19.12.2022 while rejecting the application seeking anticipatory bail to the petitioner, has held as under:-

7. Perusal of case file shows that recovery of 45 grams of Heroin and currency notes worth Rs.2200/- was effected from co-accused-Vinod Kumar, whereas, recovery of a computer scale was effected from co-accused-Rajesh Kumar, within the area of Police Station City, Tohana. Allegations against applicant-accused are that he had supplied recovered contraband to co-accused Vinod Kumar. During investigation, applicant-accused was found in constant touch with co-accused-Rajesh @ Kaka and Vinod Kumar. As per prosecution, custodial interrogation of applicant/accused is required as name of person from whom above said contraband was procured is yet to be inquired and recovery of Rs.55,000/- is also yet to be effected from him. As per police reply, applicant/accused is also involved in 01 (one) more case under NDPS Act, meaning thereby, that he has no good antecedents and apprehension of learned Public Prosecution for the State that in case present applicant/accused is granted concession of anticipatory bail, then he may not cooperate with police in investigation, may commit such like cases and may abscond from trial, seems justified. Even otherwise also, anticipatory bail is an extraordinary remedy which can be invoked in exceptional circumstances. This case does not present any exceptional circumstances warranting the grant of anticipatory bail.
8. Furthermore, the Hon'ble Punjab & Haryana High Court in case titled as *Nirbhayaram Dhakad versus State of Haryana* CRM-M-32340-2022 date of decision 27.07.2022, dismissed the petition for anticipatory bail holding that 'The Act is a self contained statute which specifically deals with menace of drugs. Stringent provisions have been provided for dealing with such cases. The ground that the petitioner was named in a disclosure statement in itself cannot be the sole consideration for grant of pre-arrest bail. He is alleged to be the supplier of the recovered contraband. A deeper probe is required to unearth the modus operandi and chain of supply.' In the said case, the Hon'ble High Court has also relied upon judgment of the Hon'ble Supreme Court in case titled as *'State of Haryana Vs. Samarth Kumar,'* Criminal Appeal No.1005 of 2022 decided on 20.07.2022; wherein, the Hon'ble Supreme Court has held that "advantage of the condition that no recovery is to be effected and that the petitioner has been named in the disclosure statement can be taken at the time of arguing regular bail or in trial. Grant of anticipatory bail in such cases is not warranted. The involvement of petitioner in six more cases is an indication of his antecedents."

In view of the dictum given by the Hon'ble Supreme Court in 'Samarth Kumar case (Supra)', even if the petitioner has been nominated on the basis of disclosure statement of the co-accused-Vinod Kumar and Rajesh Kumar, who have stated that they procured the contraband from the present petitioner, he cannot escape from his liability and also cannot claim the relief of anticipatory bail only on this ground.

As per record, investigation *qua* petitioner is pending and the source of procurement is yet to be inquired. During investigation he was found to be in constant touch with co-accused. These facts necessitate the custodial interrogation of the petitioner and recovery of Rs.55,000/- is yet to be effected. Therefore, a deeper probe is required to unearth the *modus operandi* and chain of supply. Moreso, petitioner is involved in one more case i.e. FIR No.208 dated 16.05.2020 under Sections 323/506/34 of IPC registered at Police Station City Tohana, District Fatehabad. Furthermore, the recovery effected in this case is 45 grams of *heroin* and Rs.2,200/- from the co-accused of the petitioner and petitioner named in the disclosure statement, from whom, the co-accused purchased 50 grams of *heroin* for Rs.5,500/-. Once, the allegations have been levelled against the petitioner with regard to selling of the intoxicating substance, which was recovered from the co-accused, the police has to unearth the total facts as to how the petitioner got the said substance in his possession and further whether, there were other people involved as well to whom the petitioner was selling the same or not. For effective interrogation, especially for the violation of NDPS Act, custodial interrogation is necessary. The lives of the citizens are being destroyed due to the selling of these banned substance. There is an alarming spike in the number of people buying and selling these contraband

in the country especially in Punjab, which needs to be controlled in an effective manner so as to minimise the said offence, if not to eradicate. This country has one of the largest number of youths, a factor to power economic growth, but an overwhelming majority of addicts are amongst these youths, which has resulted in increase of crime and violence. The increasing number of drug addicts day by day has resulted into an upsetting situation. The role of operators, who are working from behind the scene, also needs to be brought out as they are the actual offenders and for that purpose custodial interrogation of the petitioner is must.

Keeping in view of the peculiar facts and circumstances of the case, this Court is of the considered view that petitioner does not deserve the concession of anticipatory bail under Section 438 Cr.P.C. in the present case and, thus, the present petition stands dismissed.

06.01.2023
Neha

(NAMIT KUMAR)
JUDGE

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