

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-549-2023
Date of decision : 09.01.2023

Nirmal Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.P.S.Sekhon, Advocate
for the petitioner.

Mr.Ferry Sofat, Addl.A.G. Punjab.

VIKAS BAHL, J.(ORAL)

This is the second petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR no.68 dated 04.06.2022 registered under Sections 15, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Badhni Kalan, District Moga, during the pendency of the trial.

At the outset, it would be relevant to note that the petitioner had earlier filed an anticipatory bail application i.e. CRM-M-27911-2022 before this Court in which the following order was passed on 17.10.2022:-

“Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.68 dated 04.06.2022 registered under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Sections 25 and 29 of the NDPS Act have been added later on) at Police Station Badhni Kalan, District Moga.

After arguing for sometime and after seeing that this Court is not inclined to interfere in the matter and also in order to avoid an adverse order, learned counsel for the petitioner seeks

permission of this Court to withdraw the present petition and states that the petitioner is ready to surrender before the police within a period of 15 days from today.

Learned counsel for the petitioner has further made a prayer that in case, the petitioner surrenders before the police within a period of 15 days from today and files an application for grant of regular bail after surrender, the same be decided as expeditiously as possible preferably within a period of four days from the date of filing of the said application.

In view of the statement made by learned counsel for the petitioner, the present petition is dismissed as withdrawn.

The petitioner is directed to surrender before the police within a period of 15 days from today.

In case, after surrendering before the police within a period of 15 days from today, the petitioner files an application for grant of regular bail, the trial Court is requested to decide the same as expeditiously as possible preferably within a period of four days from the date of filing of the said application.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid order.”

A perusal of the above order would show that the learned counsel for the petitioner after arguing some time and seeing that this Court was not inclined to interfere in the matter and also in order to avoid an adverse order, had sought to withdraw the petition and it was also stated by the learned counsel for the petitioner that the petitioner was ready to surrender before the police within 15 days from the date of the order. The petitioner instead of surrendering has, after a period of more than two and a half months, filed the present second anticipatory bail petition. A perusal of the petition would show that there is no subsequent change of circumstance much less any substantial change of circumstance subsequent to the passing of the order dated 17.10.2022 and in fact, the anticipatory bail petition of the petitioner was rejected vide order dated 21.06.2022 by the Vacation

law.

This Court in order dated 04.03.2022 passed in **CRM-M-9107-2022** titled as **“Bhunesh Vs. State of Haryana”**, had noticed this unfortunate tendency growing among unscrupulous litigants, of first, arguing the anticipatory bail application and when it surfaces that the Court is not inclined to grant the same, then withdrawing the same, in order to avoid passing of an adverse order and thereafter, within few days, without any justification, again file a second anticipatory bail. Relevant portions of the said order dated 04.03.2022 are reproduced hereinbelow:-

“xxx xxx xxx xxx

This Court is of the view that there is a stark difference between filing of subsequent/successive regular bail applications or for suspension of sentence and filing of subsequent/successive anticipatory bail applications. In the case of regular bail applications, where a person is already in custody, any subsequent regular bail application filed, even after the first has been withdrawn, would normally be considered, since, the factum of “further custody” would normally be a changed circumstance. It is always open for an accused who is in custody to show that his further incarceration for some months/years is a changed circumstance, entitling him to regular bail. To exemplify, in case, a person is accused of an offence for which the maximum sentence is 10 years and his first bail application, which was filed after undergoing two years of custody, has been rejected, it would be open for that person to come after a year or after a substantial period of further custody has been undergone by him and the Courts could well grant the concession of bail to the accused on the ground of “period of custody undergone”. In the subsequent regular bail applications, there could be several factors in addition to long incarceration, which could be raised for instance, it could also be shown that there was a delay in the trial or that some material witness has demolished the case of the prosecution, which would come within the meaning of changed circumstances, so as to grant the relief to the accused therein. Similar would be the position in the case of suspension of

sentence. However, the case of anticipatory bail cannot be treated to be on the same pedestal.

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This Court would also like to take note of the unfortunate trend being adopted by unscrupulous litigants in which, as in the present case, the petition for anticipatory bail is argued and when the Court is about to dismiss the petition, learned counsel for the petitioner, in order to avoid a detailed adverse order, seeks to withdraw the petition and after some days, without any justification, files a second anticipatory bail petition. The same not only wastes the time of the Court, but is also an abuse of the process of the Court and the said practice needs to be curtailed with a heavy hand and accordingly, the present second petition for anticipatory bail is dismissed with costs of Rs.50,000/-. The petitioner is directed to deposit the same with the Haryana State Legal Services Authority within a period of one month from today.”

The Hon’ble Supreme Court in judgment titled as "**G.R. Ananda Babu Vs. The State of Tamil Nadu and another**", reported as **2021(1) RCR (Criminal) 843**, was pleased to observe as under: -

"Leave granted.

Heard learned counsel for the parties. This appeal takes exception to the judgment and order dated 24.11.2020 passed by the High Court of Judicature at Madras in Crl. O.P. No. 18412 of 2020, granting anticipatory bail to respondent No.2 in connection with FIR No. 153 of 2019 for the offences punishable under Sections 143, 436, 302, 307, 149 and 120B of Indian Penal Code.

The incident in question has occurred on 11.11.2019. Respondent No. 2 applied for anticipatory bail before the High Court first vide Crl. O.P. No. 32759 of 2019.

came to be rejected by a speaking order dated 20.12.2019. Despite rejection of anticipatory bail by the High Court, respondent No.2 after some gap moved another application for anticipatory bail being Crl. O.P. No. 8023 of 2020 which for reasons, cannot be discerned from the record, was heard by another judge. Nevertheless, it was rejected vide a

speaking order dated 29.05.2020 and more importantly taking note of the fact that there was no change in circumstances and the investigation was still incomplete. Respondent No. 2 then moved a third anticipatory bail application being Crl. O.P. No. 18412 of 2020, which has been allowed by the impugned judgment by the same Judge, who had rejected the second anticipatory bail application, referred to above, vide order dated 24.11.2020 (impugned order).

On this occasion, the learned Judge recorded following reasons for acceding to the request for grant of anticipatory bail to respondent No.2. The same read thus:

- “(i) The date of occurrence is 11.11.2019.
- (ii) Other 13 accused were arrested and surrendered, their confessional statements were recorded and they were released on bail.
- (iii) 127 private witnesses were examined and their statements were recorded.
- (iv) 12 months is over from the date of occurrence.
- (v) Six months have passed from the date of dismissal of earlier anticipatory bail application.
- (vi) The petitioner is aged 69 years alleged to be suffering from age related ailments and he is willing to co-operate with the investigation.”

We have perused the status report submitted by the Investigating Officer before the High Court for consideration along with case diary, clearly indicating that custodial interrogation of respondent No. 2 is essential and the investigation is still incomplete. Nevertheless, on the third occasion, the learned Judge acceded to the request of respondent No. 2 and granted anticipatory bail, without referring to the said status report. None of the reasons cited by the learned Judge, in our opinion, can be said to be just basis to show indulgence to respondent No. 2.

As a matter of fact, successive anticipatory bail applications ought not to be entertained and more so, when the case diary and the status report, clearly indicated that the accused (respondent No. 2) is absconding and not cooperating with the investigation. The specious reason of change in

circumstances cannot be invoked for successive anticipatory bail applications, once it is rejected by a speaking order and that too by the same Judge.

To observe sobriety, we refrain from making any further observation, except to observe, that the impugned order, to say the least, is perverse; and also because no prejudice should be caused to respondent No.2 and affect the trial against him.

Accordingly, the impugned judgment and order is set aside. The Investigating Officer is free to take respondent No. 2 into custody forthwith. The appeal is allowed in the above terms. Pending applications, if any, stand disposed of.

In the present case, it is not the case of the petitioner that after passing of the order dated 17.10.2022, there has been any change in circumstance, much less any substantial change in circumstance, thus, on the said ground alone, the present petition deserves to be dismissed.

This Court has, however, considered the merits of the case also. FIR in the present case was registered on the basis of secret information to the effect that Mandeep Singh was travelling in a canter and was in possession of poppy husk. Subsequent to the registration of the FIR, nakabandi was laid and the said Mandeep Singh, alongwith Satnam Singh, was apprehended at the spot and from the canter, recovery of 1000 kgs. of poppy husk was effected. During the course of investigation, the said two accused persons Mandeep Singh and Satnam Singh disclosed that the present petitioner and one Jaswinder Singh and Sukhwinder Singh are the owners of the said recovered poppy husk and they were also coming with them and had alighted at Bhiana Chowk, Badhni Kalan and thus, the present petitioner along with the other two accused were nominated vide DDR no.42 dated 04.06.2022 in the present case.

Learned counsel for the petitioner has submitted that in the

present case, no recovery has been effected from the present petitioner and

the recovery has been effected from the co-accused and the petitioner was sought to be implicated solely on the basis of disclosure statement of the co-accused. Reliance has been placed by learned counsel for the petitioner upon judgment of the Hon'ble Supreme Court in case titled as ***“Tofan Singh vs. State of Tamil Nadu”*** reported as ***2021(1) RCR (Criminal) 1*** to contend that the statement of the co-accused suffered before the police implicating the accused-petitioner is not admissible in evidence and thus, concession of anticipatory bail should be granted.

This Court has considered the arguments of the learned counsel for the petitioner and finds no merits in the same and thus, on merits also, the present petition deserves to be dismissed.

The Hon'ble Supreme Court in ***Samarth Kumar's*** case (supra) has held as under: -

“Leave granted.

2. *Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.*

3. *Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.*

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 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 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 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."*

A perusal of the above order would show that anticipatory bail had been granted by a Coordinate Bench of this Court on the ground that no recovery had been effected from the accused therein and they were implicated solely on the basis of disclosure statement of the main accused and reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Tofan Singh's*** case (supra) by the Coordinate Bench of this Court while granting the said anticipatory bail.

The Hon'ble Supreme Court in the above-said case observed

the time of seeking the concession of regular bail or at the time of final hearing after conclusion of the trial but the same would not warrant the grant of anticipatory bail and it was observed that the High Court had fallen into an error in granting anticipatory bail to the respondents therein.

A coordinate Bench of this Court vide order dated 23.09.2022 passed in the case **CRM-M-44196-2022** titled as **“Gurpreet Singh vs. State of Punjab”** had also dismissed the anticipatory bail application of the accused who was not named in the said FIR and was implicated on the basis of disclosure statement of his co-accused. The relevant portion of the said order is reproduced hereinbelow:-

“5. Admittedly, the petitioner is not named in the FIR but in the disclosure statement of his co-accused. The Hon’ble Supreme Court in the case titled as “The State of Haryana versus Samarath Kumar decided on July 20, 2022, has 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 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 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 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”.

Therefore, it is apparent that anticipatory bail cannot be granted to an accused on the grounds that he has only been named as an accused on the basis of a disclosure statement of his co-accused. Therefore, the judgment in “Tofan Sing’s case (supra) may be relevant for the grant of regular bail or at the time of final adjudication of the Trial.

6. In view of the above, I find no merit in the present petition, and therefore, the same is hereby dismissed.”

Against the said order, Special Leave to Appeal (Crl.) no.9680/2022 was filed which was dismissed by the Hon'ble Supreme Court vide order dated 07.11.2022.

The present case would squarely fall within the four corners of the judgment of the Hon'ble Supreme Court in ***Samarth Kumar's*** case (supra). The recovery of the intoxicant tablets effected in the present case is of very heavy quantity and the same would fall within the ambit of commercial quantity. Co-accused Mandeep Singh and Satnam Singh were apprehended while driving a canter from which recovery of 1000 kg poppy husk has been effected and said Mandeep Singh and Satnam Singh had

specifically named the present petitioner as one of the persons to whom the said poppy husk belongs and who, as per their statement, was also travelling with them and had alighted at Bhiana Chowk, Badhni Kalan. There is no allegation of malafide raised against the said co-accused or against the police official to state that he has been falsely implicated in the present case. The custodial interrogation of the petitioner is necessary so as to complete the chain of supply and also to ascertain the persons who are involved in the trade of drugs. In case, the petitioner is granted the concession of anticipatory bail then, prejudice would be caused to the case of the prosecution.

Keeping in view the above said facts and circumstances and in view of the ratio of law laid down in the above said judgments, the present petition for anticipatory bail is dismissed.

Nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

(VIKAS BAHL)
JUDGE

January 09, 2023
Davinder Kumar

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