

(102) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1796-2023
Date of Decision: 13.01.2023

DILBAHAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail in case bearing FIR No.525 dated 10.12.2022 (Annexure P-1) registered under Sections 22-C and 29 of NDPS Act, 1985 at Police Station Sadar Yamuna Nagar, District Yamuna Nagar.

2. The brief facts of the case are that while the police party was patrolling duty, information was received that Mursaleen son of Saleem who was doing the business of selling milk and had a motorcycle used to bring intoxicating capsules in the drums of the milk attached to his motorcycle and supplies the same at Yamuna Nagar. If a *naka* was laid, he could be apprehended. Based on the said information received, Mursaleen was apprehended and 1200 capsules containing Paracetamol, Dicyclomine,

Hydrochloride, Tramadol Hydrochloride and Accetaminophen came to be recovered from him.

During interrogation, he disclosed the name of the present petitioner.

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 Mursaleen and nothing was to be recovered from the present petitioner, the custodial interrogation of the petitioner was not warranted and he be granted the 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.

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 named 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.

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

(JASJIT SINGH BEDI)
JUDGE

13.01.2023

JITESH

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