

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-7164-2023 (O & M)****Date of decision: 15.02.2023**

Gurpreet Singh @ Bawa

.... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Judgepreet Singh Warring, Advocate, for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.86 dated 28.07.2022 under Sections 22/29/61/85 of the NDPS Act, registered at Police Station Mehna, District Moga, Punjab.

2. The brief facts of the case are that Pargat Singh @ Kala and Gagandeep Singh were apprehended and the recovery of 5000 intoxicant tablets came to be effected from them.

Based on the disclosure statement, the petitioner Gurpreet Singh @ Bawa was nominated as an accused.

3. The learned counsel for the petitioner contend that the petitioner has been falsely implicated in the present case. He has been named only in the disclosure statement of his co-accused which has no evidentiary value. Since the petitioner was in custody since 14.11.2022, none of the 14 prosecution witnesses had been examined so far and the petitioner is a first-time offender, he was entitled to the grant of concession of bail.

4. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband has been recovered from the co-accused of the petitioner. The nature of the allegations against the petitioner do not entitle him to the grant of bail. He, however, does not dispute the factual aspect as mentioned hereinabove regarding the period of custody and the stage of Trial.

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

6. The Hon'ble Supreme Court in the case of 'State of Haryana versus Samrath Kumar, 2022(3) RCR (Criminal) 991', 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.”

7. The petitioner is named in the disclosure statement of his co-accused. No recovery has been effected from him. The evidentiary value of the aforesaid statement shall be examined during the course of Trial. At this stage, the further incarceration of the petitioner is not required and the rigors of Section 37 NDPS Act can be relaxed to an extent in the facts and circumstances of the present case.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Gurpreet Singh @ Bawa is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case other than the present one.

10. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

(JASJIT SINGH BEDI)
JUDGE

February 15, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No