

CRM-M-8982 of 2023

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-8982 of 2023
Date of decision: 21.02.2023

Sagar Singh @ Sagar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Prateek Sodhi, Advocate,
for the petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.178 dated 27.12.2022 under Sections 21(C), 25/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of the NDPS Act added later on), registered at Police Station Majitha Road, District Police Commissionerate Amritsar.

According to the prosecution, on 27.12.2022, secret information was received by patrolling party that accused Suraj Kumar @ Suraj, resident of Gawal Mandi, Amritsar was dealing in Narcotic substance and was coming on his Activa/scooter towards the backside of Trillium Mall. Finding the information credible, the police party started checking and one person matching the particular of secret

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information was nabbed alongwith Aactiva No. PB02-EJ-1410, who disclosed his name as Suraj Kumar. From the due search of the Dicky of the Aactiva, the police recovered 1 kilogram of heroin and he was taken into custody. On 30.12.2022, said Suraj got recorded his disclosure statement and has revealed that the contraband has been supplied to him by petitioner-Sagar son of Tarsem Singh, resident of Tirath Road Gawal Mandi, who was indulging in illegal business of Narcotic substance. Further on 02.01.2023, said Suraj got recorded his disclosure statement and has revealed that said contraband given to him by petitioner-Sagar was supplied to Inderjit Singh son of Hardev Singh, resident of Bathinda as per instructions of the petitioner. During the course of investigation, complicity of one Arshdeep was also disclosed and he has since been arrested in this case. Vide DDR No.29 dated 06.01.2023, offence under Section 29 of NDPS Act was added regarding criminal conspiracy.

Learned counsel for the petitioner contends that the petitioner is innocent and has been falsely implicated in the present case. He further submits that petitioner is not named in the FIR and has been nominated as an accused only on the basis of disclosure statement of co-accused Suraj, which has no evidentiary value in the eyes of law. He further submits that no specific role has been attributed to the petitioner and nothing is to be recovered from him. Learned counsel further submits that petitioner is ready and willing to join the investigation.

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Per contra, learned State counsel, who appears on receipt of advance copy of the paperbook, opposes the prayer for grant of anticipatory bail to the petitioner on the ground that he has been specifically named by the co-accused and petitioner is a habitual offender as six more cases are pending against him. Therefore, custodial interrogation of the petitioner is required.

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

In ***State of Haryana vs Samarth Kumar, 2022 Live Law (SC) 622***, the Hon'ble Supreme Court held that the accused is not entitled for anticipatory bail only on the ground that no recovery was effected from the accused and he has been implicated on the basis of disclosure statement. Para 4 of the said judgment reads 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

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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]*

Moreover, in para 9 of the petition, without mentioning the offences against which the FIRs have been registered, petitioner has mentioned that following cases are pending against him: -

Sr. No.	Particulars of FIR	Police Station
1.	FIR No.144/18	Sadar, Amritsar
2.	FIR No.158/18	Islamabad, Amritsar
3.	FIR No.197/2018	Islamabad, Amritsar
4.	FIR No.190/2016	Civil Lines

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However, learned State counsel submits that the petitioner is involved in following six more cases, out of which five are under the NDPS Act: -

Sr. No.	FIR/Date	Under Sections	Police Station
1.	287	22 NDPS Act	Cantt., District Amritsar
2.	196/06.06.2014	21 NDPS Act	Chhehrta, District Amritsar
3.	190/25.05.2016	379-B, 323, 34 IPC	Civil Lines, Amritsar
4.	164/13.08.2016	21 NDPS	Cantt., District Amritsar
5.	144/16.07.2018	27/29 NDPS Act, 52 of the Prison Act	Sadar, District Amritsar
6.	254/07.11.2021	21-B, 29 NDPS Act, 25(6), (7), (8) of the Arms Act	Cantt., District Amritsar.

The petitioner has also intentionally concealed the factum of registration of all the FIRs against him. Petitioner is a habitual offender as other five cases have also been registered under the NDPS Act against him. Recovery of contraband is commercial in nature. The provisions of Section 37 of the NDPS Act shall be taken into consideration. Therefore, custodial interrogation of the petitioner is necessary.

It is a well-settled proposition of law that a person who does not approach the Court with clean hands and played fraud with the Court, is not entitled for any relief. Reference in this regard can be made to the judgments in *Dalip Singh v. State of U.P. and others - JT 2009 (15) SC*

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201: (2010) 2 SCC 114 and Amar Singh v. Union of India and others, WP(C) No.39/06 decided on 11.05.2011.

In **Bal Krishan Fauzdar v. State of Haryana 2018 (1) RCR Criminal 789**, it is held by a Co-ordinate Bench of this Court in para No. 8 thereof as under: -

“.....It is well settled that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.”

In view of the above, petitioner is not entitled to concession of anticipatory bail as his custodial interrogation is required.

The present petition is accordingly dismissed.

However, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

21.02.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No