

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-8977-2023

Date of Decision:-21.02.2023

Aniket.

.....Petitioner.

Versus

State of Punjab.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gagandeep Singh Bajwa, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.0001 dated 04.01.2023 under Sections 21(b), 29 of NDPS Act, 1985 registered at Police Station Division B, Amritsar City.

2. The brief facts of the case are that while the police party was on patrolling duty they saw a clean shaven person coming on an Activa and on being stopped, he tried to flee away from the spot by throwing away his Activa. The police party apprehended him when he attempted to throw a polythene packet out from his pocket. On enquiry he disclosed his named as Aashish Randhawa. 100 grams of Heroin came to be recovered from the polythene bag leading to the registration of the FIR.

Thereafter during the course of investigation, he suffered his

disclosure statement that he had purchased the Heroin from Aniket (petitioner). Based on the said disclosure statement the petitioner came to be nominated as an accused.

3. The Counsel for the petitioner contends that petitioner has been nominated on the basis of the disclosure statement of his co-accused in police custody which is inadmissible in evidence. 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 AppellantState 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 nominated 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

February 21, 2023
Vinay

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