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

**CRM-M-14931-2023
Date of Decision: 24.03.2023**

SUKHJINDER SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Kirat Singh Sidhu, D.A.G, Punjab.

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.315 dated 15.11.2022 registered under Sections 21 and 22 of NDPS Act, 1985 and (Section 29 of NDPS Act, 1985 added later on) at Police Station Sultanpur Lodhi, District Kapurthala.

2. The brief facts of the case are that while the police party was on patrolling duty, one person was seen coming on foot who on seeing the police party, immediately threw a polythene packet which he was carrying in his left hand on the left side of the road and started walking backwards. He was apprehended and disclosed his name as Avtar Singh @ Avtar son of Karnal Singh @ Kala. The search of the bag revealed 600 intoxicating tablets subsequently known to contain Alprazolam salt. Thereafter, the confessional statement of Avtar Singh @ Avtar was recorded wherein he stated that he had

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purchased the intoxicating tablets from Jaswant Singh, Joga Singh and Sukhjinder Singh (petitioner). Based on the said statement, Section 29 of the NDPS Act was added in the present case vide DDR No.22 dated 17.11.2022.

3. The learned counsel for the petitioner contends that the petitioner is named only in the disclosure statement of the co-accused. The said statement has no evidentiary value. 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. Since the aforementioned disclosure statement has no evidentiary value in the eyes of law, the petitioner was entitled to the grant of anticipatory bail, moreso, when Avtar Singh @ Avtar the main accused had been granted regular bail as the recovery was of non-commercial quantity of contraband.

4. On the other hand, the learned State counsel contends that 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].

5. In addition, the learned State counsel contends that the petitioner has been convicted in FIR No.33 dated 26.05.2015 under Section 22 of the NDPS Act, Police Station Kabirpur whereas, he is an under-trial in FIR No.141 dated 28.05.2021 under Section 22 of the NDPS Act Police Station Sultanpur Lodhi, wherein, he is not appearing before the Trial Court and has absconded during which period he has been involved in the instant FIR. He thus contends that in view of the judgment of the Hon'ble Supreme Court in the case of **State of Haryana Versus Samarth Kumar** (supra) coupled with the criminal antecedents of the petitioner as also his conduct in not appearing before the Trial Court in FIR No.141 dated 28.05.2021, the petitioner was not entitled to the grant of bail.

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

7. The Hon'ble Supreme Court in the case of **State of Haryana Versus Samarth Kumar** (supra) has held that the case of an accused can be considered for the grant of regular, if he is named in a disclosure statement but the question of grant of anticipatory bail to such an accused does not arise. In the instant case, the petitioner is a convict in one case arising out of FIR No.33 dated 26.05.2015 under Section 22 of the NDPS Act, Police Station Kabirpur whereas he is an under-trial in FIR No.141 dated

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28.05.2021 under Section 22 of the NDPS Act Police Station Sultanpur Lodhi, where he is not appearing before the Trial Court and is absconding. Therefore, the criminal antecedents as also the conduct of the petitioner does not entitle him to the grant of anticipatory bail.

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

(JASJIT SINGH BEDI)
JUDGE

24.03.2023

JITESH

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