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2023:PHHC:096006

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-19211-2023

Date of Decision: 27.07.2023

NISHAN SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kuldeep Singh Siwach, 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.145 dated 24.03.2014 registered under Sections 15, 25 and Section 27-A (Act No.61) of the NDPS Act, 1985 at Police Station Sadar Ratia, District Fatehabad.

2. The brief facts of the case are that while the police party was on patrolling duty, one Tata Turbo Canter bearing No.HR-37B-1465 came at a high speed in which two persons were sitting. The canter was signalled to stop. However, the driver of the canter broke away the barricading and went into the village. The canter was chased and was found to have got stuck on the turn of the street. The driver along with the accompanying persons fled away from the spot. However, despite a search being conducted, the said persons could not be traced. The search of the Tata Turbo canter led to the recovery of 475 kgs poppy husk (Chura post) and 198 Kgs of Doda post. From the dash board, a Nokia mobile phone was found in which a SIM of

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Vodafone was inserted. The canter along with the mobile phone were taken into possession. Thereafter, the instant FIR came to be registered.

On investigation, it was found that the Tata canter was registered in the name of Harbans Singh. Despite efforts, the said Harbans Singh was declared a proclaimed offender and a final report was presented in that regard.

On 09.03.2023, the investigation of the present case was entrusted to the Anti Narcotics Cell, Fatehabad. During the course of investigation, it transpired that proclaimed offender Harbans Singh had been lodged in Central Jail, Hisar in relation to FIR No.54 dated 06.03.2023 under Section 174-A IPC Police Station Sadar Ratia, District Fatehabad (Haryana). He was joined in investigation by obtaining production warrants and was arrested. During the course of investigation, he got recorded his disclosure statement stating that he was an addict and had also started selling poppy husk by bringing the same from Rajasthan. He had been convicted in FIR No.212/1998 under the NDPS Act in 2002 and had been sentenced to 10 years imprisonment. He had got bail after undergoing five years of his sentence. In order to pay back a loan, he had started doing the business of selling poppy husk and had purchased the canter in question in 2014. He had employed one Pyara Ram son of Fatta Ram as a driver. He along with his driver had gone to Jaipur and on the way back had got loaded the Chura Post and Doda Post which came to be recovered in the instant FIR.

Based on the aforementioned statement, the house of Pyara Ram was raided but he could not be apprehended.

Subsequently, Harbans Singh demarcated the place from where the present petitioner had supplied poppy husk to him (Harbans Singh).

As the present petitioner was lodged at Central Jail, Firozpur (Punjab), on 25.04.2023, the Investigating Officer got issued his production warrants for 29.04.2023.

3. The learned counsel for the petitioner contends that in the instant case, the petitioner has been named in the disclosure statement of his co-accused after 9 years of the occurrence. During the interim period, the petitioner has maintained good conduct. As he has been named in the disclosure statement alone without any corroborative evidence, he was entitled to the concession of anticipatory bail. Reliance is placed on the judgments in the cases of 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, State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762, Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590, Vijay Singh Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023 and Vikrant Singh Versus State of Punjab, CRM-M-39657-2020.

4. On the other hand, the learned State counsel contends that while it is true that the petitioner has been named after 9 years in the disclosure statement of Harbans Singh, the same was on account of the fact that

Harbhans Singh himself had been absconding and had also been convicted for having committed an offence under the NDPS Act. Therefore, the petitioner could not take any advantage of the delay in the arrest of Harbhans Singh as also the subsequent recording of his disclosure statement naming the petitioner. He also states that as per the disclosure statement, the petitioner had supplied 673 Kgs of poppy husk to Harbhans Singh. It is his contention that the petitioner is a convict in four cases i.e. (i) FIR No.78 dated 29.06.2013 under Section 15 NDPS Act at Police Station Sadar Jalalabad (Punjab), (ii) FIR No.65 dated 21.11.2007 under Section 15 NDPS Act Police Station Ratia, (iii) FIR No.492 dated 21.10.2023 under Section 15 NDPS Act at Police Station Ratia and (iv) FIR No.529 dated 02.11.2004 under the Excise Act at Police Station Ratia. He is also an under-trial in two cases under the NDPS Act including in FIR No.332 dated 22.09.2017 and the present FIR. Therefore, the nature of the allegations levelled against the petitioner as also the fact that the petitioner is a habitual offender having been convicted in three cases under the NDPS Act, he was not entitled to the concession of anticipatory bail.

5. I have heard the learned counsel for both the parties at length.

6. The Hon'ble Supreme Court in the case of **State of Haryana Versus Samarth 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.

[emphasis supplied]

In **Vijay Singh Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023**, it was held as under:-

“The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act”. His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed.

All pending applications are disposed of.”

(emphasis supplied)

7. In **Samarth Kumar** (supra) the Hon'ble Supreme Court had clearly held that an accused who had been named in the disclosure statement of a co-accused was not entitled to the grant of anticipatory bail but could be granted regular bail. However, in **Vijay Singh** (supra) a somewhat contrary view was taken and the accused therein was granted the concession of anticipatory bail

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even though he had been an accused in another case under the NDPS Act in which he was on bail.

8. Coming back to the facts of the present case, it may be pointed out that though, the name of the petitioner has figured only 9 years after the registration of the instant FIR, the same was only on account of the fact that the main accused Harbans Singh had absconded and had subsequently been convicted for having committed offences under the NDPS Act. It is only subsequently, upon his arrest in the year 2023 that the name of the petitioner figured in the disclosure statement of Harbans Singh. Further, the criminal antecedents of the petitioner are alarming. He is a convict in three cases under the NDPS Act and an under-trial in two. In this situation, the petitioner is certainly not entitled to the concession of anticipatory bail as he cannot avail any benefit of the judgment in Vijay Singh's (supra) case.

9. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

27.07.2023

JITESH

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