

CRM-M-25611-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-25611-2023 (O & M)

Date of decision: 25.05.2023

Karan Singh

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arshdeep Singh Brar, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, 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 FIR No.16 dated 18.01.2023 under Sections 22/61/85 of the NDPS Act, 1985 (Section 29 NDPS Act added later on) registered at Police Station Bagha Purana, District Moga.

2. The brief fact of the case are that while the police party was on patrolling duty, secret information was received that Teja Singh and Sukhjinder Singh @ Jinder, both father and son were indulging in the business of selling intoxicant tablets. They were likely to travel from Kaleka to Baghapurana in their car bearing Registration No.PB29-T-0877 for the supply of intoxicating tablets and if a *nakabandi* was set-up, they could be apprehended alongwith the contraband.

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Based on the aforesaid information, the present FIR came to be registered and a *nakabandi* was set-up. The accused came to the spot in the vehicle in question, were apprehended and while the recovery of 1000 intoxicating tablets of Calviidol-100 SR was effected from Teja Singh, recovery of 300 Calviidol-100 SR tablets was effected from Sukhjinder Singh @ Jinder and 2700 loose intoxicant tablets were recovered from the dashboard of the aforesaid vehicle.

On the disclosure statement of the co-accused Teja Singh, the petitioner-Karan Singh came to be nominated as an accused. Pursuant to the arrest of the petitioner, however, no recovery was effected from him.

3. The learned counsel for the petitioner contends that the petitioner has been named in the disclosure statement of his co-accused which has no evidentiary value in the eyes of law. 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*' and '*Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590*'. It is his contention that in "*State of Haryana versus Samarth Kumar 2022 (3) RCR (Criminal) 991*", it has been held that the accused can be granted the concession of regular bail where he has been named in the disclosure

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cannot be granted. As the petitioner was in custody since 29.03.2023, was a first-time offender and none of 18 prosecution witnesses had been examined so far, the petitioner was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, contends that commercial quantity of contraband had been recovered from the co-accused of the petitioner, and therefore, the petitioner was not entitled to the concession of bail. He, however, concedes that the petitioner was named only in the disclosure statement of the arrested co-accused and no recovery had been effected from him pursuant to his arrested. He also concedes that the petitioner was in custody since 29.03.2023, was a first-time offender and none of the 18 prosecution witnesses had been examined so far.

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

6. The Hon'ble Supreme Court in the case titled "***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 vs. 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

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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 vs. 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”.

7. In the instant case, the petitioner is named in the disclosure statement of his co-accused and pursuant to his arrest, no recovery has been effected from him. Therefore, in view of the judgment of the Hon’ble Supreme Court in **Samarth Kumar (supra)**, the case of the petitioner can be considered for the grant of regular bail, moreso, when he is a first-time

offender, in custody since 29.03.2023 and none of the 18 prosecution

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witnesses have been examined so far thereby delaying the conclusion of the Trial.

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

9. In addition, the petitioner (or through 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.

May 25, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No