

CRM-28886-2023 in/and CRM-M-31009-2023

-1-

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

CRM-28886-2023 in/and
CRM-M-31009-2023
Date of Decision: 20.07.2023

DILBAHAR

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.C. Shahpuri, Advocate
for the petitioner.

Mr. S.K. Panwar, Addl. A.G., Haryana.

JASJIT SINGH BEDI, J.

CRM-28886-2023

This is an application filed under Section 482 Cr.P.C. for
preponing the date of hearing in the case i.e. fixed for 27.09.2023.

Notice in the application.

Mr. S.K. Panwar, Addl. A.G., Haryana accepts notice on behalf
of the respondent-State.

For the reasons mentioned in the application, the same is
allowed and the date of hearing is preponed from 27.09.2023 to today and the
matter is taken up on board today itself.

CRM-M-31009-2023

This 2nd petition under Section 439 Cr.P.C. is for the grant of
regular bail in case bearing FIR No.525 dated 10.12.2022 (Annexure P-1)

CRM-28886-2023 in/and CRM-M-31009-2023

-2-

registered under Sections 22-C and 29 of NDPS Act, 1985 at Police Station Sadar Yamuna Nagar, District Yamuna Nagar.

2. The brief facts of the case are that while the police party was patrolling duty, information was received that Mursaleen (granted bail vide order dated 14.06.2023 Annexure P-4) son of Saleem who was doing the business of selling milk and had a motorcycle used to bring intoxicating capsules in the drums of the milk attached to his motorcycle and supplies the same at Yamuna Nagar. If a *naka* was laid, he could be apprehended. Based on the said information received, Mursaleen was apprehended and 1200 capsules containing Paracetamol, Dicyclomine, Hydrochloride, Tramadol Hydrochloride and Accetaminophen came to be recovered from him.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He contends that the name of the petitioner figures in the disclosure statement of his co-accused Mursaleen which has no evidentiary value. 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. 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 statement of his co-accused though, anticipatory bail to such an accused cannot be granted. As he is a first-time offender, in custody since 05.02.2023 and none of the 19 prosecution witnesses had been examined so far, the petitioner was entitled to the concession of bail.

4. On the other hand, the learned State counsel contends that the petitioner does not deserve the concession of bail looking at the seriousness of the allegations. He, however, admits that the petitioner is named in the disclosure statement of his co-accused Mursaleen. He also concedes that the petitioner is a first time offender, in custody since 05.02.2023 and none of the 19 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 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]

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. A perusal of the aforementioned judgments would show that bail can be granted to an accused where he has been named in a disclosure statement of his co-accused but there is no corroborative evidence other than the said disclosure statement.

8. In the instant case, the petitioner is named in the disclosure statement of his co-accused. None of the 19 prosecution witnesses have been examined so far and therefore, the Trial in the present case will not conclude

CRM-28886-2023 in/and CRM-M-31009-2023

-6-

anytime soon. Therefore, the further incarceration of the petitioner is not required as a *prima facie* satisfaction under Section 37 NDPS can be recorded in the aforementioned factual scenario.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Dilbahar son of Iqbal is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than the present case.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

20.07.2023

JITESH

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