

CRM-M-32513-2023

2023:PHHC:087586

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

CRM-M-32513-2023

Date of Decision: 13.07.2023

CHIRAJ JAGOTA @ JOGGAN

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Pradeep Panwar, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.235 dated 26.09.2022 (Annexure P-1) registered under Sections 21/21-C/29/61/85 of NDPS Act at Police Station STF, Phase-IV, SAS Nagar, Mohali.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Harsh Kalyan son of Vicky Kalyan and Anmol Singh son of Karan Singh Gill were indulging in the business of trafficking of heroin/drugs. They had gone towards Vardhaman Chock in their vehicle bearing registration No.PB-10-FN-9409 for supplying heroin. If a *naka* was laid, the said accused could be apprehended with huge quantity of contraband.

Based on the said information, the FIR was registered and a *naka* was set up. The accused were apprehended and 1.570 grams of heroin came to be recovered from them. During investigation, co-accused Harsh Kalyan

suffered a statement that the recovered heroin belonged to the petitioner. Thereafter, the present petitioner came to be nominated as an accused.

3. The learned counsel for the petitioner contends that the petitioner has not been named in the FIR but only in the disclosure statement of his co-accused Harsh Kalyan. Pursuant to his arrest, no recovery whatsoever has been effected. 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 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 the petitioner was in custody since 11.12.2022, was a first-time offender and none of the 27 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 Harsh Kalyan and has clean

antecedents with no other case registered against him. He also admits the fact that none of the 27 prosecution witnesses have been examined so far.

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** (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]

A perusal of the aforementioned judgment would show that regular 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.

7. In the instant case the petitioner is named in the disclosure statement of his co-accused. He is a first-time offender and no recovery has been effected from him. Further, none of the 27 prosecution witnesses have been examined so far and therefore, the Trial in the present case will not conclude 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.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Chiraj Jagota @ Joggan son of Adarsh Kumar 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.

9. 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.

10. In addition, the petitioner (or anyone 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

13.07.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No