

214 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH
 CRM-M-44509-2023
 Date of Decision:04.10.2023

Mukesh Kumar

...Petitioner

Vs.

State of Haryana

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. D.S Virk, Advocate
 for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 438 Cr. PC with a prayer to grant of anticipatory bail in case FIR No.215 dated 24.08.2023, under Sections 17B/61/85 of NDPS Act, 1985 registered at Police Station Nathusari Chopta, District Sirsa (Annexure P-1).

2. The FIR in the present case was registered on the basis of the statement made by ASI Prem Kumar. As per the complainant, he along with other police officials were present at Bus Stop Village Darba Kalan and in the meantime, a secret informer came and informed that Sohan Lal son of Shri Chand resident of Manak Diwan, Police Station Nathusari Chopta was doing the business of selling opium and in case the raid was conducted immediately, he could be apprehended along with opium. The complainant prepared a report under Section 42 of the NDPS Act and sent the same to SHO Police Station Nathusari Chopta for information through EHC Anil Kumar. He along with other police officials reached at the house of Sohan Lal in a Government vehicle and after following the due process of law, he was arrested from the

spot with 80 grams of opium. He was questioned by the police and he informed that he had purchased the recovered opium from Mukesh Kumar resident of Nehrana, the present petitioner. With these main allegations, the FIR in the present case was registered.

3. Learned counsel for the petitioner submits that co-accused namely Sohan Lal was arrested as he was found keeping in his conscious possession 80 grams of opium, which was contained a transparent polythene by him. He further contended that no recovery had taken place from the present petitioner and he had been falsely involved by the police. He further contends that apart from the disclosure statement suffered by co-accused in police custody, there was no evidence to connect him with the commission of the crime and had been implicated under political pressure. He further contended that even the confessional statement made by co-accused in police custody would be inadmissible in evidence and apart from that, the prosecution had not been able to collect any incriminating evidence against him. The alleged recovery of contraband from co-accused Sohan Lal was non-commercial in nature and the petitioner was ready to join the investigation. He further contended that even though one more case under NDPS Act was registered against the petitioner, but he was on bail in the said case.

4. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner by submitting that the petitioner was named in the FIR as well as the disclosure statement of his co-accused Sohan Lal. Apart from that, the petitioner had supplied the opium to Sohan Lal and many other persons. Even otherwise, the petitioner is involved in a case under NDPS Act and his custodial interrogation is required to ascertain

the involvement of other accused in the present case.

5. I have heard the learned counsel for the parties and with their able assistance, I have gone through the paperbook.

6. The Hon'ble Supreme Court has held in a case titled as ***"The State of Haryana Vs. Samarth kumar"*** reported as 2022 Live Law (SC) 622 has held as under:-

"Leave granted.

2. Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.

3. Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.

*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 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 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.”

7. From the above referred order passed by the Hon’ble Supreme Court, it is clear that the benefit of decision in **Tofan Singh Vs. State of Tamil Nadu 2021 (1) RCR (Criminal) 1 : (2021) 4 SCC 1** case could be taken at the time of seeking the concession of regular bail or at the time of final hearing after conclusion of the trial, but the same would not warrant the grant of anticipatory bail to the petitioner.

8. Still further, in the present case no doubt the quantity of the contraband recovered from co-accused Sohan Lal was non-commercial in nature, but the petitioner had supplied the same to Sohan Lal, co-accused. Apart from that, there were serious allegations against the petitioner that he was indulging in smuggling of opium and other narcotics drugs. Even he himself was involved in one more case i.e. FIR No. 239/2016 under Section 8/15/61/85 NDPS Act, Police Station Neemach (Madhya Pradesh) and his custodial interrogation will be required in the present case.

9. Without commenting any further, it is observed that there is no merit in the present petition and the same is ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

04.10.2023
hitesh

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