

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

**CRM-M-56462-2022
Date of Decision: 10.02.2023**

RAJU ALIAS MANPHOOL RAM

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Neeraj Madaan, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, 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.74 dated 21.05.2021(Annexure P-1) registered under Sections 22-C, 29, 61, 85 of the NDPS Act at Police Station Bhavwala, District Fazilka.

2. The brief facts of the case are that secret information was received that Deepak Kumar alias Deepu son of Jai Pal, Baljinder Singh son of Rama Ram and Kulwant Singh alias Pala son of Sher used to bring intoxicating tablets from Rajasthan and sold the same in connivance with each other. They were coming in a Zen Car bearing No. RJ-14-SC-3819 bringing tablets in huge quantity. If a barricade was set up, they could be apprehended.

Based on the aforementioned information, the present FIR was registered and subsequent thereto, 25000/- tablets came to be recovered from the accused.

During questioning, the accused disclosed that they had purchased the recovered contraband from the petitioner and would supply the same to Shagun Lal.

3. The learned counsel for the petitioner contends that no recovery has been effected from him. In fact, he was in custody in FIR No.77 dated 06.07.2020 registered under Sections 8, 21, 22, 29 of NPDS Act at Police Station Muklava, District Ganganagar since 27.09.2020. The said fact was discernible from the statement under Section 161 Cr.P.C. of HC Gurdeep Singh (Annexure P-2). Since the petitioner was in custody since more than 07 months prior to the registration of the present FIR, the question of the culpability of the petitioner would be highly debatable. Since the petitioner now was in custody in the present case since 09.08.2021 and only 03 out of the 18 prosecution witnesses had been examined so far, his further incarceration was not required and he be granted the concession of bail.

4. On the other hand, the learned State counsel contends that the petitioner was named in the disclosure statement of his co-accused. In the said disclosure statement, the co-accused have not stated as to on which date the petitioner had supplied the contraband to them. Therefore, merely because the petitioner was in custody at Rajasthan since 27.09.2020 did not entitle him to the grant of bail.

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

6. Admittedly, the petitioner has been named in a disclosure statement of his co-accused. No recovery has been effected from him. It is also true that on the date of the occurrence and much prior thereto i.e. from 27.09.2020, the petitioner is in custody at Sub Jail Anoopgarh Rajasthan in FIR No.77 dated 06.07.2020 registered under Sections 8, 21, 22, 29 of NPDS Act at Police Station Muklava, District Ganganagar. Therefore, the evidentiary value of the confessional statement of his co-accused would a matter of adjudication during Trial. Only 03 out of the 18 prosecution witnesses have been examined so far and therefore, the Trial of the present case is not likely to be concluded anytime soon.

7. 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]

It is apparent that the case of an accused can be considered for the grant of regular bail when he has been named in a disclosure statement. Therefore, the further incarceration of the petitioner is not required.

8. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Raju @ Manphool Ram son of Jeet

Singh 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 cases mentioned in this order.

10. 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.

11. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

10.02.2023

JITESH

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