

Tarandeep Singh

...Petitioner

vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Buta Singh Bairagi, Advocate, for the petitioner.

Mr. Sanish Girdhar, AAG, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 438 Cr.P.C. with a prayer to grant anticipatory bail to him in case FIR No.209, dated 16.09.2023 under Sections 21 and 29 of NDPS Act, registered at Police Station Dharamkot, District Moga, Punjab.

2. As per case of the prosecution, on 16.09.2023, a police team headed by HC Kanwaldeep Singh, Anti Narcotic Drugs Cell, Moga was present for patrolling and the police team was informed by a secret informer that Sukhwant Singh alias Kala was indulging in the business of selling *heroin* and he was standing under the bridge on Lohgarh Road. As per the secret informer, he was waiting for the customers there to sell the *heroin* and if a raid was conducted, he could be apprehended with huge quantity of *heroin*. After following the process of law, the raid was conducted and the accused-Sukhwant Singh alias Kala son of Gurdeep Singh, resident of Lohgarh Basti, Dharamkot was apprehended and 100 grams of *heroin* was recovered from his possession.

As per the prosecution, during the course of investigation, Sukhwant Singh alias

Kala had suffered a disclosure statement and Tarandeep Singh, accused/petitioner was nominated as an accused vide GD entry No.17 dated 18.09.2023.

3. Learned counsel for the petitioner contends that the petitioner has been wrongly arrayed as an accused under Section 29 of the NDPS Act, solely on the basis of the disclosure statement suffered by Sukhwant Singh alias Kala, co-accused. He further contends that the admissibility of the said disclosure statement is yet to be adjudicated by the trial Court, during the course of trial. He further contends that the petitioner is not involved in any other case and is ready to join the investigation.

4. On the other hand, learned State counsel has placed on record a status report by way of an affidavit of Deputy Superintendent of Police, Dharamkot, District Moga and the same is taken on record. Learned State counsel submits that in the present case, the police party had apprehended Sukhwant Singh alias Kala, who was found in possession of 100 grams of *heroin*. As per learned State counsel, on 18.09.2023, Sukhwant Singh alias Kala disclosed that he had bought the *heroin* from Tarandeep Singh, petitioner and on the basis of the said statement, the petitioner was nominated as an accused in the present case vide DDR No.17 dated 18.09.2023. He further submits that the CDR of phone number 8968090095 of the petitioner was also obtained and it was found that the petitioner was in touch with Sukhwant Singh alias Kala, main accused. He further contends that three more cases i.e. FIR No.22 dated 17.02.2019, under Section 27 of Arms Act, at Police Station Nihal Singh Wala, FIR No.159 dated 16.11.2016, under Section 336, 341, 148, 149 of IPC and Sections 25 and 27 of Arms Act, at Police Station Badhni Kalan and

FIR No.83 dated 08.07.2014, under Section 22 of NDPS Act, at Police Station Badhni Kalan were registered against the present petitioner. He further submits that the petitioner was acquitted in FIR No.159 dated 16.11.2016 and FIR No.83 dated 08.07.2014 has already been cancelled against the present petitioner. He however, contends that the petitioner is involved in selling the heroin to different persons and his custodial interrogation is required, at this stage.

5. I have heard learned counsel for the parties and perused the record.

6. The Hon'ble Supreme Court has held in the matter of “ **The State of Haryana Vs. Samarth Kumar**”, 2022 LiveLaw (SC) 622 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.”*

7. After hearing learned counsel for both the parties, I find sufficient force in the submissions made by learned State counsel. Apart from the disclosure statement suffered by Sukhwant Singh alias Kala, it has been found that the petitioner was regularly in touch with the principal accused. Apart from that, in the past also, criminal cases have been registered against the present petitioner.

8. Consequently, keeping in view the submissions made by learned State counsel and the law laid down by the Hon'ble Supreme Court in the matter of “**The State of Haryana Vs. Samarth Kumar**”, it is apparent that the custodial interrogation of the petitioner will be required, at this stage and the petitioner is not entitled to the concession of anticipatory bail under Section 438 of Cr.P.C.

9. The present petitioner is, accordingly, ordered to be dismissed.

(N.S.SHEKHAWAT)
JUDGE

31.10.2023
hemlata

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