

209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-51979-2023

Date of Decision: 09.11.2023

Amit Kumar

...Petitioner

VS.

State of Haryana

...Respondent

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

Present : Mr. Dheeraj Narula, Advocate
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

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.0252 dated 30.09.2023, under Section 15(b) of NDPS Act No.61 of 1985, registered at Police Station Ding, District Sirsa.

2. As per the prosecution, the FIR in the present case was registered on the basis of the statement made by ASI Sandeep. A police party was on patrolling and crime checking duty and one person was apprehended on suspicion. On enquiry, the said person disclosed his name and address as Vinod Kumar son of Brij Lal, resident of village Kusumbi, District Sirsa. On the basis of suspicion of having some intoxicant substance, a notice under Section 50 of NDPS Act was served on Vinod Kumar, co-accused. After following the process of law, the search was conducted and 3 Kg of poppy husk (Doda post) was recovered from Vinod Kumar, co-accused.

3. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case. In fact, there was non-compliance of Section 50 of NDPS Act in the present case. He further contends that the recovery of 3 kgs of poppy husk from the co-accused is non-commercial in nature. He further contends that the petitioner has been nominated as an accused in the present case on the basis of disclosure statement suffered by the co-accused Vinod Kumar and no recovery is to be effected from the present petitioner. Learned counsel further contends that earlier also, he was falsely involved in a case and he had moved a application (Annexure P-2) to the Superintendent of Police, Sirsa, in this regard. He next contends that he is the victim of political rivalry and has been falsely involved by the complainant.

4. On the other hand, learned State counsel submits that in fact, the present petitioner is the supplier of contraband and he had supplied 10 kgs of poppy husk to Vinod Kumar, co-accused. However, Vinod Kumar, co-accused had consumed 7 kgs of poppy husk and remaining quantity i.e. 3 kgs poppy husk were recovered from him. He further contends that another FIR No.299/2022, under Section 15 of NDPS Act at Police Station M.S. Chopta was also pending against the present petitioner. Since the petitioner is a habitual offender, he is not entitled to the concession of anticipatory bail by this Court.

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. From the submissions made by the learned counsel for the parties, it is apparent that the present petitioner was involved in one more case i.e. FIR

No.299/2022, under Section 15 of NDPS Act at Police Station M.S. Chopta.

The petitioner was on bail in the said case and in the meantime, his involvement has been found by the police in the present case as well. From the incriminating evidence collected so far, it is apparent that the petitioner is the supplier of contraband to Vinod Kumar, co-accused and 3 kgs of poppy husk has been recovered from Vinod Kumar, co-accused.

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 is required to know the whereabouts the details of the person, from whom, he had purchased the recovered contraband and the recovery of Verna Car used in commission of crime and Rs.33,000/- are yet to be recovered from him.

9. Thus, finding no merits in the present case, the present petition deserves dismissal by this Court to take the investigation to its logical end.

10. Dismissed.

09.11.2023

hemlata

(N.S.SHEKHAWAT)
JUDGE

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