

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-60923-2022 (O & M)****Date of decision: 13.04.2023**

Aarif Khan

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Manvinder Sidhu, Advocate, for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.0304 dated 30.06.2022 under Sections 15, 27-A, 29 of the NDPS Act, registered at Police Station City Mandi Dabwali, District Sirsa.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Surender Singh alias Babbi son of Angrej Singh and Hargobind Singh @ Ghilla son of Hardev Singh, owner and truck driver of truck No.HR 57A-7298, namely, Gursewak Singh @ Sewak, Brezza car No.HR-25H-2885 and truck conductor name not known alongwith others did the business of selling doda post. They were bringing doda post in large quantity from Madhya Pradesh in a truck and would unload the truck at village Desujodha in the nearby fields and by concealing it in the fields they would further sell to their customers by contacting them. On 29.06.2022 at night, Surender Singh alias Babbi filled doda post in the said truck bearing No.HR57A-7298 and piloting the truck was a Brezza car bearing No.HR-25H-2885. The doda post was brought to

village Desujodha and was hidden in a room in the fields of Harjeet Singh and that land was taken on lease from Hargobind Singh @ Ghilla. Surender Singh @ Babbi and Hargobind Singh @ Ghilla were sitting together in the front of the room built in the fields waiting for the customers and trying to sell the doda post. If the place was raided, then the persons could be apprehended.

Based on the information, the FIR was registered, a raid was conducted and a recovery of 1050 Kgs. of doda post was effected.

During the course of investigation, Surender Singh @ Babbi and Hargobind Singh @ Ghilla made their confessions that out of 50 bags of doda post brought by them from Gurpreet Singh of Madhya Pradesh, 05 bags were sold to Chamkaur Singh (since granted bail vide order dated 22.12.2022 passed in CRM-M-41585-2022).

On 05.07.2022 co-accused Gurpreet Singh was arrested and made his disclosure statement stating that he alongwith Dhaba Owner Irfan Khan (petitioner) @ Aarif Khan son of Sharafat Khan had sold the recovered poppy husk to the accused persons. A sum of Rs.10,000/- was recovered from the co-accused Gurpreet Singh.

During the investigation, on the identification by the co-accused Gurpreet Singh, the petitioner Irfan Khan @ Aarif Khan was arrested by the police on 10.07.2022. Three mobile phones alongwith SIM card and one Baleno car bearing registration No.MP-09WM-0904 were recovered from the petitioner. A sum of Rs.20,000/- was also recovered from him.

3. The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. No recovery of any contraband was effected from him. He has only been named in the

He contends that as per the judgment in 'State of Haryana versus Samarth Kumar, 2022(3) RCR (Criminal) 991' the case of the petitioner could be considered for the grant of regular bail, moreso, when his co-accused, namely, Chamkaur Singh has been granted the similar relief. He also contends that since the petitioner is in custody since 10.07.2022, the further incarceration of the petitioner is not required.

4. The learned counsel for the State, on the other hand, contends that the petitioner was named in the disclosure statement of his co-accused. There is one other case registered against him under the NDPS Act bearing FIR No.545 dated 05.12.2019 under Sections 307/147/336/353/332 IPC and Sections 8/15 of the NDPS Act registered at Police Station Industrial Area, Jabra, District Ratlam (Madhya Pradesh). Therefore, his criminal antecedents did not entitle him to the grant of bail. Even otherwise, Rs.20.000/- was recovered from him at the time of his arrest which is proceeds of crime.

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

6. The Hon'ble Supreme Court in the case of 'Samarath Kumar (supra)', has 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 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 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”.

7. Admittedly, the petitioner is named in the disclosure statement of his co-accused. Pursuant to his arrest, no recovery has been effected from him. The Hon’ble Supreme Court in ‘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’ and ‘Sanjeev Chandra

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held that the statement of an accused against his co-accused in police custody, is inadmissible in evidence. Whether the recovery of Rs.20,000/- from the petitioner is proceeds of crime or not would be adjudicated upon during the course of the Trial. The co-accused of the petitioner, namely, Chamkaur Singh, has been granted the concession of bail vide order dated 22.12.2022. As such, the further incarceration of the petitioner is not required.

8. In view of the above, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Aarif Khan @ Irfan Khan, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the police station concerned till the conclusion of the trial and furnish an affidavit each time that he is not involved in any crime other than the cases referred to hereinabove.

10. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- 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.

(JASJIT SINGH BEDI)
JUDGE

April 13, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No