

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.104

CRM-M-59047-2023
Date of decision:23.11.2023

Ravi

...Petitioner

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Rishu Mahajan, Advocate for the petitioner.

N.S. SHEKHAWAT, J.

1. The present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.370 dated 31.10.2022 registered under Sections 21(b)/29 of the NPDS Act at Police Station Maqboolpura, District Amritsar.
2. The FIR in the present case was got registered by SI Satnam Singh, who along with other police officials was on patrolling. On suspicion, a person was apprehended and disclosed his name as Happy son of Daljit Singh, resident of House No.745, Street No.12, Maqboolpura Mehta Road, Amritsar. After following the due procedure, 50 grams of heroin was recovered from him, which he had kept in his conscious possession. As per the case of the prosecution, during the course of investigation, Happy had suffered a disclosure statement that he used to purchase heroin from his brother, namely, Ravi, accused/petitioner.

3. Learned counsel for the petitioner contends that the petitioner was neither named in the FIR nor there is any averment which connects the petitioner with the alleged crime. The only evidence against the present petitioner at this stage, is the statement made by his brother, Happy, in police custody and he has been wrongly arrayed as an accused in the present case.

4. On an advance notice, Mr. Amish Sharma, AAG, Punjab has put in appearance on behalf of the learned counsel for the State and has vehemently opposed the prayer made by the learned counsel for the petitioner. On instructions from ASI Ram Pal Singh, learned State counsel has submitted that two more cases under the various provisions of the Indian Penal Code and one case under the provisions of NDPS Act have already been registered against the petitioner and he is a habitual offender. He next submits that in the present case, there are specific allegations against the petitioner that he was the supplier of the alleged contraband to his brother Happy, who has been arrested at the spot. In support of his contention, learned State counsel has also relied upon the law laid down by the Hon'ble Supreme Court in **“State of Haryana Vs. Samarth Kumar”, 2022 LiveLaw (SC) 622**, wherein the Hon'ble Supreme Court has held as follows:-

*“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.”*

5. I have heard the learned counsel for the parties and perused the case file minutely.

6. From the submissions made by the learned counsel for the parties, it is apparent that the contentions raised by the learned counsel for the petitioner can very well be considered at the time of considering his prayer for grant of regular bail, in view of the law laid down by the Hon’ble Supreme Court in **Samarth Kumar’s** case (supra). Still further, the petitioner is a habitual offender and custodial interrogation would certainly

be required to elicit the mode and manner, in which he was supplying the drugs to his brother and others.

7. Finding no merit in the present petition, the same is hereby dismissed.

23.11.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO