

2023:PHHC:156597

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.106

CRM-M-61502-2022
Date of decision:07.12.2023

Parvez

...Petitioner

Versus

State of Haryana

...Respondent(s)

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

Present: Ms. Sanya Kaushal, Advocate for the petitioner.

N.S. SHEKHAWAT, J.

1. The present petition has been preferred by the petitioner under Section 438 Cr.P.C. with a prayer to grant anticipatory bail to him in case FIR No.385 dated 11.09.2023 registered under Sections 21-B of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

2. As per the case of the prosecution, Vivek @ Rajan son of Jaspal was apprehended by the police on 11.09.2023, while he was carrying 6.85 grams of heroin. After following the process of law, Vivek @ Rajan was ordered to be arrested. During the course of investigation, Vivek @ Rajan suffered a disclosure statement to the effect that the alleged contraband was supplied to him by petitioner-Parvez. She next submits that the petitioner has been falsely involved only on the basis of suspicion and there is no other evidence against him except the disclosure statement suffered by co-

accused-Vivek @ Rajan, which connects the petitioner with the alleged

crime. She also submits that the petitioner has been harassed continuously by the police without any search warrants.

3. On an advance notice, Mr. Rajinder Kumar Banku, DAG, Haryana, learned State counsel, has appeared and vehemently opposed the submissions made by the learned counsel for the petitioner. He submits that the petitioner is a habitual offender and is a supplier of drugs in District Yamuna Nagar. He further contends that seven cases have already been registered against the petitioner under the NDPS Act. Apart from that, seven more cases, under the various provisions of Indian Penal Code, have also been registered against the present petitioner. He has referred to para 11 of the petition, wherein the details of such FIRs have been mentioned and the same are reproduced below:-

- i) FIR No.614 dated 02.07.2020 under Sections 148/149/323/506 IPC and Section 25 of the Arms Act registered at Police Station Yamuna Nagar.
- ii) FIR No.193 dated 14.03.2023 under Section 379 IPC registered at Police Station Yamuna Nagar.
- iii) FIR No.597 dated 18.07.2022 under Sections 341/506/34 IPC registered at Police Station City Yamuna Nagar.
- iv) FIR No.642 dated 04.08.2022 under Section 21 b of NDPS Act registered at Police Station City Yamuna Nagar.
- v) FIR No.716 dated 03.12.2019 under Sections 323/506/34 IPC registered at Police Station City Yamuna Nagar.
- vi) FIR No.732 dated 10.11.2020 under Sections 323/148/149/427/506 IPC registered at Police Station City Yamuna Nagar.
- vii) FIR No.757 dated 21.11.2020 under Section 21 B of NDPS Act registered at Police Station City Yamuna Nagar.

- viii) FIR No.789 dated 07.12.2020 under Section 21 B of NDPS Act registered at Police Station City Yamuna Nagar.
- ix) FIR No.838 dated 08.10.2022 under Section 21 B of NDPS Act registered at Police Station City Yamuna Nagar.
- x) FIR No.131 dated 20.03.2023 under Section 21 b of NDPS Act registered at Police Station Sadar Yamuna Nagar.
- xi) FIR No.189 dated 12.07.2019 under Sections 324/323/342/427/201 IPC registered at Police Station Sadar Yamuna Nagar.
- xii) FIR No.228 dated 02.07.2020 under Sections 323/148/149/341/506 IPC and under Section 3 of SC/ST Act registered at Police Station Sadar Yamuna Nagar.
- xiii) FIR No.405 dated 09.09.2022 under Section 21-b of NDPS Act registered at Police Station Sadar Yamuna Nagar.
- xiv) FIR No.900 dated 07.11.2023 under Section 21-b of NDPS Act registered at Police Station City Yamuna Nagar.

4. Learned State counsel has also relied upon the law laid down by the Hon'ble Supreme Court in the matter of State of **Haryana versus Samarth Kumar, 2022 (3) RCR (Cril.) 991**, wherein Hon'ble the Supreme Court 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 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 parties, it is apparent that the petitioner is a habitual offender as seven more cases under the provisions of the NDPS Act have already been registered against the petitioner.

Consequently, in view of the above-said discussion as well as the law laid

down by Hon’ble the Supreme Court in **Samarth Kumar’s** case (supra), I find no ground to accept the present petition and accordingly, the same is hereby dismissed.

07.12.2023
mks

(N.S. SHEKHAWAT)
JUDGE

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