

105 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
 AT CHANDIGARH
 CRM-M-64673-2023
 Date of Decision:21.12.2023

Sher Singh @ Shera

...Petitioner

Vs.

State of Haryana

...Respondent

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

Present: Mr. K.L Saini, Advocate
 for the petitioner.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner has moved the present petition under Section 438 Cr.P.C with a prayer to grant anticipatory bail to him in case FIR No.256 dated 30.08.2023 registered under Section 15 of NDPS Act (Section 27-A added subsequently) Police Station Sadar, Safidon, District Jind.

2. The FIR in the present case was registered on the basis of the allegations that the main accused Malkinder Singh son of Shobhna Singh, was carrying 400 grams of opium and 3 KG 372 grams of poppy husk was in his conscious possession without any permit or license. As per the FIR, after following the due process of law, he was apprehended at the spot and the recovery was effected from him.

3. Learned counsel for the petitioner submits that the petitioner has not been named in the present case and has been falsely implicated in the present case on the basis of disclosure statement suffered by his co-accused. He further contends that neither the petitioner was present at the time of alleged

recovery nor anything was to be recovered from the possession of the present petitioner. The recovery of the contraband i.e 400 grams of opium and 3 KG 372 grams of poppy husk, which were recovered from the present petitioner were non-commercial in nature. He further contends that only one case i.e FIR No. 493 dated 19.09.2013, under Section 15 of the NDPS Act, Police Station Assandh was registered against the present petitioner and no other case was registered against the present petitioner.

4. On the other hand learned State counsel has vehemently opposed the submissions made by learned State counsel on the ground that the petitioner is a habitual offender. As per him, three more cases including two cases of NDPS Act were registered against the present petitioner and out of the said cases, in one case i.e, FIR No.493 dated 19.09.2013, under Section 15 of the NDPS Act, Police Station Assandh, the petitioner has been convicted by the Special Court. Thus, the petitioner does not deserve the concession of anticipatory bail.

5. 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.”

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

7. From the submissions made by the parties, it is apparent that the petitioner is a habitual offender as two 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.

21.12.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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