

**106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-6842-2024
Date of Decision:08.02.2024

Ashraf ...Petitioner

Vs.

State of Haryana ...Respondent

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

Present: Mr. Karan Kaushal, Advocate
for the petitioner.

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

N.S.Shekhawat J.

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.25 dated 14.01.2024 under Sections 21(b) and 29 of NDPS Act, registered at Police Station Gandhi Nagar, District Yamuna Nagar (Annexure P-1).

2. As per the case of the prosecution, on receipt of a secret information on 14.01.2024 regarding involvement of Divanshu @ Ritik in illegal transportation/sale of smack, the complainant along with other police officials arrested the accused and on his arrest, he disclosed his name and address as Divanshu @ Ritik son of Ramesh Kumar, resident of House No.149,Sunder Vihar Colony Near Holi Mother School, Gandhi Nagar, District Yamuna Nagar, Haryana. On personal search of Divanshu @ Ritik, 15.86 grams of *heroin* was recovered from his conscious possession, without any permit or license. Learned counsel for the petitioner contends that it has been

falsely alleged that co-accused namely Divanshu @ Ritik had purchased the contraband from the present petitioner. He further contends that the petitioner had no concern with the main accused Divanshu @ Ritik and has been falsely involved in the present case by adding the offence under Section 29 of the NDPS Act. Learned counsel for the petitioner has also placed reliance upon the judgment passed the Hon'ble Supreme Court of India in case **CRA-152 of 2013** titled as **“Tofan Singh vs. State of Tamil Nadu”**. Learned counsel further submits that in the present case the recovery was effected from Divanshu @ Ritik was non-commercial in nature. Even the custodial interrogation of the petitioner is not required in the present case.

3. On the other hand learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner is a habitual offender. Even two more cases under NDPS Act have been ordered to be registered against him. Apart from that, learned State counsel has also relied upon the law laid down by the Hon'ble Supreme Court in the matter of **“State of Haryana Vs. Samarth Kumar”, 2022 LiveLaw (SC) 622**, wherein the Hon'ble Supreme Court 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.”

4. I have heard the learned counsel for the parties and perused the record carefully.

5. From the submissions made by learned counsel for the parties, it is apparent that the petitioner is already involved in two more similar cases. Apart from that, the petitioner had allegedly supplied the contraband to co-accused

Divanshu @ Ritik and in the considered opinion, the custody of the petitioner will be required to find out the source, which had supplied the heroin to the present petitioner.

6. Thus, findings no merits, the present petition is ordered to be dismissed.

08.02.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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