

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8079-2024
DECIDED ON: 15.02.2024

JOBANBIR SINGH @ JOBAN

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rahul Bhargava, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 438 Cr.P.C., seeking anticipatory bail to the petitioner in FIR No.143 dated 01.12.2023 (Annexure P-1), under Sections 21(C) of NDPS Act (Sections 25, 27(A), 29 of NDPS Act, 1985 and Sections 10, 11 and 12 of Aircraft Act 1934 were added later on), registered at Police Station Khalra, District Tarn Taran.
2. The factual matrix leading to the filing of the present petition as narrated in the FIR reads as under:-

“SHO PS Khalra, Today I ASI along with ASI Lakhwinder Singh 1058/T.Ta, HC Jagroop Singh 619/T.Ta, PHG Major Singh 4540 along with Laptop printer were patrolling on government vehicle whose number PB.65.BF.1049 driven by ASI Balwinder Singh 1101/T.Ta in search of bad and suspicious persons from Maadi Megha to Gurudwara Baba Baaj Singh. When the police party was a little behind the turn of Gurudwara Baba Baaj Singh, then a young person was seen coming on foot by the side of paved road who on seeing the police

party in govt. vehicle, took out transparent polythene from right side pocket of his lower which he was wearing and threw it on the side of the road and started to turn back. Then I ASI by stopping the vehicle and with the help of police officials apprehended the person and asked about his name and address, who disclosed his name as Ranjit Singh S/o Balwinder Singh resident of Maadi Megha. Then on being asked about the polythene which he threw away on which he disclosed that it contains heroine, which I had thrown away out of fear of yours. Then on the instructions of ASI, the polythene was picked up and was presented, but before opening the polythene, efforts were being made to join independent witness from the public but everyone showed their helplessness. On which I ASI in presence of official witness checked the polythene and on checking the same, heroine was recovered. Then with the help of electronic weighing machine, the recovered heroine along-with polythene bag was weighed on which the weight came out to be 255 grams of heroin. The recovered heroine along with polythene bag was put in a separate plastic box and parcel was prepared. On the said parcel I ASI affixed my seal as 'SS'. After affixing the seal, the prepared parcel was being taken into police possession vide separate recovery memo. Sample of the seal was prepared separately and after affixing the seal, the same was being handed over to ASI Lakhwinder Singh 1058 / T .Ta. That accused Ranjit Singh son of Balwinder Singh resident of Village Maadi Megha for keeping 255 grams of heroin in his possession has committed the offence under section 21-C, 61, 85 of NDPS ACT. Ruqa has been written on laptop and print has been taken through printer and the same is being sent for registration of case to the police station at the hands of PHG Major Singh 4540. After registering the case, number may be intimated. Control room be intimated for preparing the special reports. I along-with police officials are present at the spot. Maadi Megha AT:- 12:05 PM Sd/- Satnam Singh ASI PS Khalra Dated 01.12.2023.”

3. Learned counsel for the petitioner submits that the petitioner has been nominated after three days of lodging of instant FIR on the basis of disclosure statement suffered by co-accused namely Ranjit Singh from whom recovery of 255 grams of heroin was effected. He further submits that no recovery has been effected from the conscious possession of the petitioner.

4. Notice of motion.

5. On the asking of Court, Mr. Rajiv Verma, DAG Punjab accepts notice on behalf of respondent-State, who on instructions from ASI Gurnam Singh submits that the person from whom the alleged contraband was recovered is the servant of the petitioner. He asserts that on 05.09.2023, when the police party intercepted the car of the present petitioner, he ran away after leaving the car at the spot and on search thereof, drug money to the tune of Rs.2,18,500/- was recovered by the prosecution from the said car. He prays for dismissal of the present petition stating that it is a settled principle of law that anticipatory bail cannot be granted to an accused, who has been named in the disclosure statement of the arrested accused.

6. Having heard learned counsel for both the parties.

7. Apparently, the petitioner is not named in the FIR and nothing has been recovered from his conscious possession, but has been nominated on the basis of disclosure statement suffered by the co-accused namely Ranjit Singh.

8. The Hon'ble Supreme Court in the case titled as "***The State of Haryana versus Samarath Kumar 2022 decided on July 20, 2022***", 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 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.

9. Therefore, it is apparent that anticipatory bail cannot be granted to an accused on the grounds that he has only been named as an accused on the basis of a disclosure statement of his co-accused. Therefore, the judgment in “Tofan Sing’s

case (supra) may be relevant for the grant of regular bail or at the time of final adjudication of the Trial.

14. In the light of the discussions made hereinabove and considering the fact that the co-accused is the servant of the petitioner and a drug money was also recovered from the car of the petitioner, which is sufficient to infer this Court that the petitioner is actively involved in commissioning of offence, this petition deserves to be dismissed having no merits. Hence, the same stands dismissed with no order as to costs.

15.02.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>