



CRM-M-18266-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18266-2024 (O&M)

Date of Decision : 19.11.2024

VISHAL

.....Petitioner

Versus

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Dhruv Gupta, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana and
Mr. Anmol Malik, DAG Haryana.

KIRTI SINGH, J.(Oral)

Apprehending arrest in FIR No.409 dated 26.07.2023 under Sections 21/27-A/29 NDPS Act registered at Police Station Ambala Cantt., District Ambala, the petitioner has preferred this petition under Section 438 of Cr.P.C. for grant of anticipatory bail.

2. The contents of the above-mentioned FIR are reproduced herein below :-

“To, SHO Police Station Ambala Cantt., Jai Hind, Sir, Today on 25.07.2023, me, P/SI Rohit Kumar, Police Station Ambala Cantt. along with SI Harinder Singh No. 106, ASI Raghubir Singh No. 193, HC Rajesh Kumar No. 48, HC Gurmail Singh No. 253, EHC Shankar No. 1601 in Government vehicle bearing no. HR37-C-6370 driven by SPO Gurwinder Singh No. 128 were on patrolling duty in uniform along with Laptop, Printer, Folding Barricades and investigation bag at 11:15 PM from Police Station Ambala Cantt towards Sadar Bazar,



Ambala Cantt., Auto Stand Ambala Cantt., Nikelson Road Ambala Cantt., were present at Gurgudia drain bridge, Jagadhri Road Ambala Cantt., at 12:30 AM on 26.07.2023 and in the meanwhile secret informer informed P/SI Rohit Kumar that Dishant Kumar son of Om Parkash is resident of Jali Mill, Ambala Cantt., Police Station Ambala Cantt, District Ambala and as per the instructions of Satyam Chadha son of Anil Chadha, resident of Ahluwalia Building, Ambala Cantt., District Ambala, Waris son of Kamal Kishore, resident of Kaccha Bazar, Ambala Cantt., District Ambala, Lakhan Kumar son of Vinod Kumar, resident of Dina Ki Mandi, Ambala Cantt., District Ambala and Vicky son of Ashok Kumar, resident of Rana Park, behind B.D. Floor Mill, Mahesh Nagar, Ambala after taking money from them brings intoxicating substance (Smack) from Delhi in his car bearing no. HR85-B-3044 Mark i-20 White colour. Today also, he has gone to Delhi to bring intoxicant substance (Srnick) in his car bearing no. HR85-B-3044 Mark i- 20 White colour and after sometime he is going towards his home Jali Mill Ambala Cantt. from cremation ground Jagadhri Road, Ambala Cantt with huge quantity of intoxicant substance/smack in his car. If barricading is done near cremation ARUN SINGH RAWAT ground, Jagadhri Road, Ambala Cantt., he can be apprehended with huge quantity of intoxicant substance/smack. The information given by the secret informer solid and reliable and on that P/SI Rohit Kumar prepared or information letter and sent for the information of SHO Police Station Ambala Cantt. to EHC Shankar no. 1601 and prepared a notice under Section 42 of INDPS Act separately and sent the same through HC Rajesh Kumar No.48 to Sh. Ashish Choudhary HPS, DSP Ambala Cantt, and his residence GO Mess Ambala City. P/SI Rohit Kumar requested the passerby to join the barricading but every one left by telling their valid reason. Thereafter, P/SI Rohit Kumar started doing barricading after opening the folding barricades with the help of accompanying police official. After some time, a car bearing no. HR85-B-3044 Mark i-20 of White Colour was seen coming towards Round Circle (Gol Chakkar) Ambala Cantt., to which the secret information signaled to P/SI Rohit Kumar and



thereafter, with the help of accompanying police official, he was apprehended. P/SI Rohit Kumar took out the key of the car bearing no. HR85-B-3044 Marka i-20 of White Colour and keep it with him. P/SI Rohit Kumar asked the name and address of the young man sitting on the drive seat. On asking by P/SI Rohit Kumar, he disclosed his name and address as Dishant Kumar @ D.K. son of Om Parkas, resident of H.No. 6353/31, Jali Mill, Ambala Cantt, Police Station Ambala Cantt., District Ambala. P/SI Rohit Kumar disclosed his identity to him and told that we have received the information that you are having intoxicant substance/smack in your car and you have a legal right to get your search to be conducted in the presence of any Magistrate or Gazetted officer and he can be call at the spot. On that P/SI Rohit Kumar prepared the notice under Section 50 of NDPS Act separately and read over the same to him and make understand to him. Dishant Kumar mentioned above, gave his consent for conducting his search through Gazetted Officer and the notice mentioned above was signed by Dishant Kumar and witnesses. The consent memo was prepared sedately and the same was signed by Dishant Kumar mentioned above and the witnesses. On that P/SI Rohit Kumar called from his mobile number 4569901815 to Sh. Ashish Choudhary HPS, DSP Ambala Cantt. on his official no. 9729990103 at 1:40 AM and after informing him facts of the case requested to come at the spot. On that Sh. Ashish Choudhary HPS, DSP Ambala Cantt directed P/SI Rohit Kumar to bring Dishant Kumar mentioned above along with his car at his residence G.O. Mess, Ambala City. Thereafter, P/SI "Rohit Kumar with the help of accompanying police official lift Dishant Kumar from driver seat and made him to seat on the back seat of car bearing no. HR-85- B-3044 Marka i-20 of White Colour and himself drive the car along with government vehicle and proceeded towards G.O. Mess Ambala City at 1:45 AM. P/SI Rohit Kumar along with vehicle no. HR-85-B-3044 Marka i-20 of white colour along with Dishant Kumar mentioned above and accompanying police officials reached at the residence of Sh. Ashish Choudhary, HPS, DSP Ambala Cantt., G.O., Mess, Ambala City at 2:13 AM where Sh. Ashish Choudhary HPS,



DSP Ambala Cantt was found present and FVSI Rohit Kumar informed about the facts till now and presented the notice under Section 50 of NDPA Act before him. Thereafter, Sh. Ashish Choudhary HPS, DSP Ambala Cantt. Disclosed his identity to Dishant Kumar mentioned above and told that I am Ashish Choudhary, HPS, DSP Ambala Cantt. Thereafter, Ashish Choudhary HPS, DSP Ambala Cantt seen the consent form prepared under Section 50 of NDPA Act and thereafter, Ashish Choudhary HPS, DSP Ambala Cantt conducted the search of P/SI Rohit Kumar as per law regarding secret information and P/SI Rohit Kumar conducted the search of SI Harinder Singh No. 106, ASI Raghubir Singh No. 193, HC Gurmail Singh No. 253/Ambala as per law and instructions of Ashish Choudhary HPS, DSP Ambala Cantt. On the search, nothing objectionable was found from their possession except the articles of daily needs. Ashish Choudhary HPS, DSP Ambala Cantt directed to conduct the search of Dishant Kumar mentioned above in his presence. On the search of Dishant Kumar from the right pocket of the Jeans of blue colour, two mobile phones, one marka ONEPLUS of green colour and another OPPO were recovered. As per disclosure of Dishant Kumar, in ONEPLUS phone was having SIM No. 8131029274 and Whats-dip No. +447443081296 and OPPO mobile phone was having SIM No. 9729851645. From the left pocket of his Jeans Rs. 1150/- were found and on the search of car bearing no. HR-85-B-3044 Mark 1-20 of White Colour, a black polythene containing intoxicant substance in the form of Sweet (Laddu) were found under the driver seat. The said intoxicant substance in the form of sweet (Laddu) was found to be heroin (smack) on the basis of experience of P/SI Rohit Kumar and Sh. Ashish Kumar HPS, DSP Ambala Cantt and as per the disclosure made by accused Dishant Kumar. Accused Dishant Kumar mentioned above, on demand could not produced any license for permit. On doing the weight of intoxicant substance recovered from Dishant in electronic weighing machine it was found to be 1Kg. 13 grams along with polythene of black colour. The recovered heroin (smack) along with black colour polythene back was put into plastic



box and a separate memo was prepared by putting the same in a white colour clothe. The recovery memo was sealed with RS/3 by P/SI Rohit Kumar and sample seal RS/1 was prepared separately and Sh. Ashish Choudhary HPS, DSP Ambala Cantt also put his seal AC/1 on the recovery memo and also put his seal AC/1 on sample seal and after using, kept it with him. P/SI Rohit Kumar after using his seal RS/1 and preparing the sample seal, handed over the same to SI Harinder Singh NO. 106. The recover intoxicant 1 Kg. 13 grams along with black colour polythene, mobile phone ONEPLUS OF green colour long with SIM and mobile Phone OPPO of Grey Colour along with SIM, Rs. 1150/- of Current note and car bearing no. HR-85-B-3044 Mark 1-20 of white colour and sample seal were taken into police possession as evidence. Recovery memo was prepared separately. Accused Dishant Kumar and the witnesses put their respective signatures on the recovery memo. The recovery memo of case property, heroin (smack) and sample seal were attested by Sh. Ashish Choudhary HPS, DSP, Ambala Cantt. On inquiry by P/SI Rohit Kumar of accused Dishant Kumar, he told that I often brings heroin/smack on the asking of Satyam Chadha son of Anil Chadha, resident of HNo. 6341/4, Ahluwalia Building, Near Gandhi Market, Ambala Cantt., District Ambala, Waris son of Kamal Kishore, resident of Kaccha Bazar, Ambala Cantt, district Ambala, Lakhan Kumar son of Vinod Kumar, resident of near Basanti Mai Mandir, Dina Ki Mandi, Ambala Cantt and Vicky son of Ashok Kumar, resident of Rana Car behind B.D. Floor Mill, Mahesh Nagar who are doing the business of selling the drugs. I have brought the said drugs on their asking from one Nazarian from the place told by them and hand over the heroin to Satyam, Waris, Lakhan and Vicky after reaching at Ambala. They all four further supply the same, near the area of Ambala Cantt. Abovementioned all four pay the money for the said heroin and to me also maximum money is given by them. I am doing this work for the last long time after taking money from them. The heroin recovered from me today also belongs to all four of them. Satyam Chadha is the kingpin of selling this entire intoxicant and for the said purpose



Satyam Chadha has given me one mobile phone Marka ONEPLUS of green colour having SIM No. 8131029274 and whatsapp no. +447443081296 and from these numbers I often talk with Satyam Chadha through whats-app call. Dishant Kumar mentioned above and Satyam Chadha son of Anil Chadha, resident of H.No. 6341/4, Ahluwalia Building, Near Gandhi Market, Ambala Cantt, District Ambala, Waris son of Kamal Kishore, resident of Kaccha Bazar, Ambala Cantt., District Ambala, Lakhan Kumar son of Vinod Kumar, resident of Near Basanti Mai Mandir, Dina Ki Mandir, Ambala Cantt., District Ambala and Vicky son of Ashok Kumar, resident of Rana Park behind B.D. Floor Mill, Mahesh Nagar, Ambala Cantt in connivance with each other have committed offence under Sections 21, 27A, 29-91-85 of NDPS Act for keeping in possession 1 Kg. 13 grams of heroin by accused Dishant Kumar without any license/permit. On that P/SI Rohit Kumar wrote a note and sent the same to Police Station Ambala Cantt. through Gurinail Singh No. 253 for registration the FIR and to inform about the FIR number. Thereafter, special reports were sent to Senior Police Officials. The senior police officials be informed about the facts and as per the orders of Hon'ble Supreme Court, SHO be informed regarding sending another Investigating officer for further investigation at spot, NED COPY OF THE Cremation Ground, Jagadhri Road, Ambala Cantt. P/SI Rohit Kumar is busy in investigation. Today, G.O. Mess Ambala Shahar, Sd/- Rohit Kumar P/SI, Ambala Cantt.

3. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case as he is neither named in the FIR nor in the secret information, which identifies five co-accused persons. It was argued that the petitioner's alleged involvement is based solely on the disclosure statement of co-accused, alleging that the petitioner provided ₹1 lakh to co-accused Satyam Sood for the purchase of heroin. It was further submitted that no incriminating evidence,



such as call records, chats, or financial transactions, has been produced to connect the petitioner with the alleged offence. It was further submitted that the mandatory provisions of the NDPS Act, 1985, have not been complied with, and a bare perusal of the FIR reveals that no offence under Sections 21, 27-A, or 29 of the NDPS Act, 1985, is made out, as the basic ingredients of these offences are missing.

4. Per contra, learned State counsel vehemently opposed the petition, asserting that the petitioner is deeply involved in a well-organized network of drug trafficking. It was submitted that during the investigation on 29.07.2023, co-accused Dishant Kumar disclosed the active involvement of the petitioner and his brother namely Rohan, in the sale of heroin in the Ambala Cantt area. The learned State counsel further submits that, based on the disclosure statements and demarcations made by co-accused persons, incriminating evidence, including property documents and electronic devices, were recovered during searches of the petitioner's residence and associated premises. It was also submitted that the petitioner has a history of criminal activity, with two criminal cases registered against him, demonstrating his habitual involvement in heinous offences. There are two other cases registered against the petitioner under NDPS Act i.e. FIR No.383 dated 01.09.2021 under Sections 21/29 NDPS Act registered at Police Station Ambala Cantt. District Ambala and another FIR also under the NDPS Act. Thus, the petitioner was not entitled to the concession of anticipatory bail in the present case.

5. Learned State counsel has relied upon the judgment passed by the Co-ordinate Bench of this Court vide order dated 16.01.2024 in CRM-M-65130-



2023 titled as "**Ajay Singh Vs. State of Haryana**" and 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 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. Learned State counsel has also placed on reliance on the order passed by the Hon'ble Supreme Court in the matter of **Parwinder Singh Parminder Kumar @ Vicky Vs. State of Punjab** arising out of S.LP. (Crl.) No. 12601 of 2023, wherein the Hon'ble Supreme Court has held as under:-

4. *It is true that it is a case of recovery of non-commercial quantity of the contraband and as such rigors of Section 37 of the NDPS Act are not attracted. It is also a matter of record that a coordinate Bench of this Court granted interim protection to the appellant on 06.10.2023 and pursuant thereto, he joined the investigation, which is now complete. The Chargesheet has also been filed. The question, however, that arises for consideration is whether the appellant deserves to be extended the benefit of pre-arrest bail in a case of recovery of contraband like heroin and when he is also found involved in one more case under the NDPS Act?*

5. *Having heard learned counsel for the parties, we are of the considered view that the parameters of granting bail in a case under special statutes like NDPS Act may not be liberally construed in the instant case. We say so taking notice of the fact that the State of Punjab is reeling under the grip of drug menace. There are several drug lords whose roots are identifiable in the State of Punjab, and who operate in the cross-border drug racketing and*



organized trafficking of narcotic drugs and psychotropic substances. It is a matter of common knowledge that huge cache of illicit drugs is smuggled across the border. Some local Pharmaceutical Industries, State police officials and other affluent people have been suspected to be involved, at occasions, in international drug trafficking. The drug addiction has posed a serious threat to the once vibrant state of Punjab. The Courts, therefore, ought to be highly circumspect while granting bail, especially to a repeat offender. The appellant, as it seems from the allegations, is a drug peddler and there is every likelihood of his returning to the same illicit trade once he is allowed the privilege of pre-arrest bail.

6. We are, thus, of the opinion that the appellant does not deserve the concession of anticipatory bail. However, the appellant, like his co-accused, shall be at liberty to apply for regular bail. If such an application is moved, the same shall be decided by the learned Special Judge as early as possible and preferably within two weeks.

7. Heard the rival submissions made by learned counsel for the parties and perused the record.

8. Coming back to the facts of the present case, other than the present FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of a co-accused, there are two other cases registered against the petitioner under NDPS Act i.e. FIR No.383 dated 01.09.2021 under Sections 21/29 NDPS Act registered at Police Station Ambala Cantt. District Ambala and another FIR also under the NDPS Act. Thus, a habitual offender is not entitled to



the grant of bail even under the provisions of the Cr.P.C. keeping in view his criminal antecedents. On the contrary, in such cases, where anticipatory bail is sought the custodial interrogation is certainly necessary even though the accused may have joined investigation at an earlier stage.

10. Keeping in view the conduct of the petitioner and his criminal antecedents, his custodial interrogation would certainly be necessary to effect recoveries and to take the investigation to its logical conclusion.

11. In view of the above, I find no merit in the present petition. Therefore, the same stands **dismissed**.

12. Pending application(s), if any, also stands disposed of accordingly.

19.11.2024
Kavita

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No