

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-28136-2023

Date of Decision:-14.02.2024

Pawan.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Ms. Suman Kumari, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.126 dated 09.03.2023 under Sections 18-C NDPS Act, 1860 registered at Police Station Sadar Fatehabad, District Fatehabad.

2. The brief facts of the case are that Sandeep and Pawan Kumar son of Rajender were apprehended with 510 grams of Opium. During interrogation they disclosed that they had jointly purchased the contraband from petitioner-Pawan son of Hardwari Lal.

3. The learned counsel for the petitioner contends that as the petitioner has been named in the disclosure statement of his co-accused without any corroborative evidence, he was entitled to the concession of bail. Even otherwise, he had joined the investigation pursuant to an interim

order of this Court dated 31.05.2023 and so his custodial interrogation was not required. Reliance is placed on the judgments in the cases of Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Versus Union of India, 2021(1) RCR (Criminal) 704, Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954, State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762, Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590, Vijay Singh Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023 and Vikrant Singh Versus State of Punjab, CRM-M-39657-2020.

4. The Counsel for the State contends that the petitioner is a habitual offender and apart from the present case, the petitioner is an under-trial in three other cases bearing FIR No.498 dated 13.09.2018 under Sections 22-C NDPS Act, 1985, Police Station Sadar Ratia, District Fatehabad, FIR No.500 dated 14.09.2018 under Section 22-C of NDPS Act, 1985, Police Station Sadar Ratia, District Fatehabad and FIR No.67 dated 29.03.2019 under Sections 15/29 NDPS Act, 1985 Police Station Sadar Ratia, District Fatehabad. He, therefore, contends that the antecedents of the petitioner did not entitle him to the grant of anticipatory bail even though he had joined investigation earlier in the peculiar facts and circumstances of the present case as the twin conditions envisaged under Section 37 of the NDPS Act could not be satisfied.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of State of Haryana Versus Samarth Kumar (supra), 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.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

10. In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant-State is entitled to take steps, in accordance with law.

[emphasis supplied]

7. However, in Vijay Singh Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023, it was held as under:-

“The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act". His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed.

All pending applications are disposed of.”

(emphasis supplied)

8. This Court in the case of Vikrant Singh Versus State of Punjab, CRM-M-39657-2020, held as under:-

“It is not in dispute that the petitioners have not been named in the FIR. No recovery has been effected from the petitioners and the alleged recovery has been effected from two co-accused Rakesh Sharma and Ravdeep Singh alias Sheru. The petitioners are sought to be implicated solely on the basis of the disclosure statement made by the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and

even after the petitioners were arrayed as accused in pursuance of the disclosure statements, no recovery had been made from the petitioners.

The petitioners have been in custody since 06.11.2020 (Vikrant Singh), 05.12.2020 (Subash Chander) and 23.04.2021 (Davinder Singh) and challan in the present case has already been presented and there are 32 witnesses, out of whom only one has been examined and thus, the trial is likely to take time on account of Covid-19 Pandemic. The petitioners are not involved in any other case. With respect to the call details, suffice to say that no dates on which the said calls had been allegedly made by the coaccused, Rakesh Sharma and Ravdeep Singh alias Sheru to the petitioners or vice-versa have been mentioned in the affidavit or in the report under Section 173 Cr.P.C. Moreover, even the transcript of the said conversations are not a part of the record under Section 173 Cr.P.C. A Division Bench of this Court in Narcotics Control Bureau's case (supra), was pleased to observe as under:-

Still further, no conversation detail between accused Ramesh Kumar Patil and accused Sandeep has been produced by the prosecution. Mere call details is not sufficient to prove that Sandeep accused was also involved in the business of narcotic drugs or he had any connected with Ramesh Kumar Patil.

In view of the above, no case is made out for grant of leave to appeal against the acquittal of Sandeep accused.”

In judgment of the Gujarat High Court in Yash Jayeshbhai Champaklal Shah's case (supra), it has been observed as under:-

“Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of

contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused.”

A perusal of the above judgment would show that without the transcript of the conversations exchanged between the co-accused, mere call details would not be considered to be corroborative material in absence of substantive material found against the accused. In the present case, there is no other material against the petitioners.

Keeping in view the above-said facts and circumstances, as well as law laid down in the judgments noticed hereinabove, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to their not being required in any other case.

(emphasis supplied)

9. This Court in the case of **Ranjit Singh Versus State of Punjab, CRM-M-25526-2023, decided on 17.07.2023**, held as under:-

“8. Coming back to the facts of the present case, it is pertinent to note here that other than the instant FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of the arrested accused, the petitioner is also an accused in two other cases under the NDPS Act. In addition, he had been an accused in three other cases, though he has been acquitted in the said cases. It is highly unlikely that the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency.

9. When there are multiple FIRs against a person over a significant period of time (in this case 18 years), then even though he may have been acquitted in some of those cases,

the twin conditions as envisaged under Section 37 of the NDPS Act that he has not committed an offence and was not likely to commit an offence cannot be satisfied.

10. Keeping in view the conduct of the petitioner and his criminal antecedents, his custodial interrogation would certainly be necessary to effect necessary 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.

(emphasized supplied)

10. In **Samarth Kumar** (supra) the Hon'ble Supreme Court had clearly held that an accused who had been named in the disclosure statement of a co-accused was not entitled to the grant of anticipatory bail but could be granted regular bail. However, in **Vijay Singh** (supra) a somewhat contrary view was taken and the accused therein was granted the concession of anticipatory bail even though he had been an accused in another case under the NDPS Act in which he was on bail. In **Vikrant Singh** (supra) this Court held that where an accused had been named in the disclosure statement of his co-accused and there were CDRs/WhatsApp calls/chats between the arrested accused and the person named in a disclosure statement then in the absence of the contents of the conversation/chats bail could not be denied to the said accused. In **Ranjit Singh** (supra) it has been held by this Court that where there were multiple FIRs against an accused over a period of time then, even though he had been named in a disclosure statement, he was not entitled to the concession of bail.

11. 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 his co-accused, the petitioner is also an accused in three other cases under the NDPS Act. It is highly unlikely that

the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency.

12. In fact, when there are multiple FIRs against an accused over a significant period of time, then the twin conditions as envisaged under Section 37 of the NDPS Act that he had not committed an offence and was not likely to commit an offence cannot be satisfied. In such cases, the custodial interrogation is certainly necessary even though the accused may have joined investigation at an earlier stage.

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

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

(JASJIT SINGH BEDI)
JUDGE

February 14, 2024
Vinay

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