



CRM-M-30399-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.215

Case No. : CRM-M-30399-2024

Date of Decision : July 15, 2024

Bhupinder Singh

.... Petitioner

vs.

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Bhupender Singh, Advocate
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

* * *

GURBIR SINGH, J. :

1. This is a petition under Section 438 Cr.P.C., filed by the petitioner, seeking anticipatory bail in case FIR No.247 dated 29.05.2024 (Annexure P-1), under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as – NDPS Act), and Section 42 of the Prisoner Act (Sections 25, 29 of the NDPS Act and Sections 201, 120-B IPC, 1860 added later on), registered at Police Station Ram Nagar, District Karnal.

2. Learned counsel for the petitioner has argued that the petitioner is not named in the FIR. He has been implicated on the basis of disclosure statement of co-accused Sonu. The petitioner is not concerned with the alleged recovery or prisoners, from whom the contraband was recovered.

3. As per version of the prosecution, 38 grams of opium was recovered from the co-accused namely Gurpreet Singh @ Bhajji. The said

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recovery is of non-commercial quantity. It has been disclosed by co-accused Sonu that money for opium was paid by father of prisoner Gurpreet Singh @ Bhajji. Learned counsel for the petitioner further contends that the petitioner is not involved in any other case under the NDPS Act and he also undertakes to appear in this case on each and every date of hearing and to co-operate the investigating agency during interrogation. Therefore, the petitioner be granted concession of anticipatory bail. In support of his contentions, learned counsel for the petitioner has relied upon various judgments passed by Co-ordinate Benches of this Court i.e. **Deepak Masih vs. State of Punjab** bearing **CRM-M-60330-2023**, **Davinder Rana alias Ravinder alias Tony vs. State of Punjab** bearing **CRM-M-65098-2023** and **Surinder Kumar vs. State of Punjab** bearing **CRM-M-52858-2023**, in which concession of anticipatory bail has been granted.

4. Pursuant to order dated 09.07.2024, passed by this Court, Status Report by way of affidavit of Meena Kumari, HPS, Deputy Superintendent of Police, Women Safety, District Karnal, has been filed in Court today, which is ordered to be taken on record.

5. Controverting the arguments advanced by learned counsel for the petitioner, learned State counsel has opposed the present petition, submitting that recovery of opium was effected from co-accused Gurpreet Singh @ Bhajji, who is a prisoner and lodged in District Prison, Karnal to undergo sentence of life imprisonment. He gave his statement that the opium recovered was given to him by another prisoner Sonu, who was also lodged in the same jail and was also undergoing sentence of life imprisonment. On his asking, prisoner Gurpreet Singh @ Bhajji transferred money into bank



account of Sonu through his family members.

6. On further inquiry from Sonu, it transpired that the intoxicant material was brought and handed over to him by Warder Balraj Singh – Belt No.2369 and to bring this contraband, father of prisoner Gurpreet Singh @ Bhajji had given money to petitioner Bhupinder Singh, who was released on bail from the jail. Thus, Bhupinder Singh purchased this intoxicant material and gave the same to aforesaid Warder Balraj Singh, who was on duty in the jail at the relevant time. Then, the contraband was handed over to Sonu, as planned.

7. It has been further contended by learned State counsel that during investigation, the jail officials have also produced a CD, consisting of recorded conversation, made by prisoner Gurpreet Singh @ Bhajji on the mobile phone of his father Kuldeep Singh. The same was also taken into police possession. Learned State counsel has placed reliance upon a judgment of Hon'ble Supreme Court in State of Haryana vs. Samarth Kumar reported as 2022(3) R.C.R.(Criminal) 991.

8. I have heard the arguments raised by learned counsel for the petitioner and learned State counsel and have also perused the paper book.

9. In the case of Samarth Kumar (supra), Hon'ble Supreme Court has held that advantage of judgment passed in the case titled Tofan Singh vs. State of Tamil Nadu reported as (2021) 4 SCC 1, may be taken in regular bail application or at the time of final hearing after conclusion of trial because that concession was granted in pursuance of anticipatory bail granted by the High Court. The extract of the said judgment reads 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 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.”

10. Therefore, this Court is of the view that the same cannot be taken as ground to seek relief in each and every case. In the case in hand, it is not the disclosure statement but the conversation between the co-accused Gurpreet Singh @ Bhajji and his father, from the jail. So, the authorities cited by learned counsel for the petitioner are of no help to the petitioner since in those cases, no material was collected during investigation except the disclosure statement.

11. In view of the above discussion, I am of the view that supplying of intoxicant substance in the jail and that too, through a jail official, is a serious offence and investigation into the same is required to go upto the root of the case. The co-accused Warder Balraj Singh – Belt No.2369 is yet to be arrested. So, this Court is of the opinion that custodial interrogation of the petitioner is necessary. Accordingly, there is no merit in the present petition and the same is hereby dismissed.

12. However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

13. Pending applications, if any, shall stand disposed of along with this judgment.

July 15, 2024

monika

(GURBIR SINGH)
JUDGE

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