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

CRM-M-34678-2023

Date of Decision: 06.03.2024

Shinder Singh

...Petitioner

vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Tanvir Joshi, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG, Punjab.

N.S.Shekhawat J. (Oral)

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.173 dated 17.12.2022, registered under Section 15(C) of NDPS Act, 1985 (Section 29 of NDPS Act added subsequently), at Police Station Dayalpura, District Bathinda.
2. As per case of the prosecution, on 17.12.2022, a police party headed by SI Harjiwan Singh was on patrolling duty and a Bolero Pickup vehicle was found parked near the Star Palace and two persons were moving bundles of plastic ropes on the same. Both the said persons were apprehended on suspicion and they disclosed their names as Surinder Kumar and Ashok Bishnoi. Even two persons were sitting on the top of the vehicle and disclosed their names Sandeep Kumar @ Sonu and Yogesh Kumar. After following the due process, 13 bags of poppy husk weighing 20 kgs each were recovered and thus, total 260 Kgs of poppy husk was recovered from the said four accused.

3. Learned counsel for the petitioner contends that the petitioner has not been named in the present case and had no connection with the alleged recovery effected from the four other co-accused. He further contends that the petitioner has been wrongly involved in the present case only on the basis of the disclosure statement suffered by the co-accused and the admissibility of the said statement is yet to be adjudicated during the course of trial by the trial Court. Learned counsel further contends that the petitioner is permanently disabled person, upto the extent of 60% as per Unique Disability ID issued by Government of India on 25.02.2021.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that apart from the disclosure statement suffered by his co-accused, it has been established that the petitioner was in constant touch with the other accused, from whom the recovery has been effected. Learned State counsel further submits that the petitioner is a habitual offender and is also facing one more criminal case i.e. FIR No.81 dated 11.07.2019 under Section 8/18 of NDPS Act, at Police Station Srinagar, District Ajmer (Rajasthan). He further contends that even the recovery of contraband from the present petitioner is commercial in nature and the rigors of Section 37 of the Act would apply to the facts of the present case.

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

6. The Hon'ble Supreme Court has held in the matter of ***“State of Haryana Vs. Samarth Kumar”***, 2022 LiveLaw (SC) 622, 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.”*

7. In the present case, the police has collected the record of call details between the petitioner and the other co-accused, who are apprehended at the spot. Apart from that, the co-accused have also suffered their disclosure statement and the petitioner has been specifically named as one of the person, who was actively involved with them. Otherwise also, the recovery of contraband from the co-accused of the petitioner falls within the ambit of ‘commercial quantity’.

8. Finding no merits, the present petition is ordered to be dismissed.

9. The observations have been made in this order only for the limited purpose of disposal of the bail application and the trial shall be decided by the trial Court on the strength of the evidence led before it.

06.03.2024.
hemlata

(N.S.SHEKHAWAT)
JUDGE

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