

2024:PHHC:119291



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-44782 of 2024
Date of Decision: 10.09.2024

Harpal Singh ...Petitioner
Versus
State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Gurdharshan Singh Sidhu, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of Bhartiya Nagrik Suraksha Sahinta, 2023 with a prayer to grant the concession of anticipatory bail to him in case FIR No. 535 dated 06.08.2024 registered under Section 15-C of NDPS Act and Section 25 of Arms Act at Police Station Sirsa City, District Sirsa (Annexure P-1).

2. As per the case set up by the prosecution, on 06.08.2024, Amandeep Singh, Pradeep Kumar and Jaswant Kumar were arrested by the police, while they were carrying 101.200 kilograms of poppy husk in their conscious possession in five plastic bags, without any authorization. After complying with the mandatory provision, all the accused were arrested in the present case. During the course of

investigation, accused Amandeep Singh and Pradeep Kumar disclosed that they had bought the poppy husk from a person namely Gaggi resident of Kotli, District Mansa and they also have to give commission by selling poppy husk.

3. Learned counsel for the petitioner contends that the petitioner is resident of Village Kotli-Khurd, District Bhatinda, whereas, the allegations have been levelled against one Gaggi resident of Kotli, District Mansa and, thus, the petitioner is being falsely involved in the present case. He further contends that except the disclosure statement there is no legally admissible evidence against the present petitioner. Even the disclosure statement suffered by the co-accused in the police custody cannot be used as an evidence against the present petitioner. He further contends that even though the petitioner had talked to the co-accused on phone, but there was nothing on record to show that the alleged conversation between the petitioner and other co-accused was relating to the recovery of the contraband in the present case. He further contends that in fact, Amandeep Singh, co-accused is running a shuttering store at Village Rori and he had borrowed money from the petitioner in the year 2022. Since Amandeep Singh did not return the money, the petitioner had made phone calls to Amandeep Singh and also pressurized him to return the money of the petitioner. Learned counsel has relied upon the affidavit (Annexure P-3) sworn by Darshan Singh, Member Panchayat, Village Kotli Khurd in this regard. Learned counsel

further contends that there is no other criminal case against the present petitioner. He further contends that the custodial interrogation of the petitioner is not required in the peculiar facts and circumstances of the present case.

4. On the other hand, on advance notice, learned State counsel submits that the petitioner is specifically named in the present FIR as Gaggu resident of Kotli, District Mansa. She further contends that in fact, Gaggu is the alias name of the present petitioner and the name of the petitioner was wrongly mentioned in the FIR. However, during the course of investigation, the police has been able to collect sufficient evidence, which would establish the complicity of the present petitioner in the present crime. She further contends that even call details of the petitioner with the main accused has been found and it has also been found that the petitioner had supplied the contraband to the co-accused.

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

6. From the averments made in the FIR (Annexure P-1), it is clear that the accused namely, Amandeep Singh and Pradeep Kumar had bought the recovered poppy husk from a person, namely, Gaggu, resident of village Kotli, District Mansa. The petitioner is also resident of village Kotli, District Bathinda and it is apparent that the name of the district of the petitioner was wrongly mentioned in the FIR. However, during the course of investigation,

the identity of the petitioner was amply proved and finding sufficient evidence against him, he was sought to be arrested by the police. Still further, in the present case, both the main accused, namely, Pardeep Kumar and Amandeep Singh were constantly in touch with the petitioner on phone. Thus, it is apparent that very serious allegations have been levelled against the present petitioner and his custodial interrogation is required to find the source of the contraband, which has already been recovered by the police. Apart from that, the police is also trying to arrest the petitioner as his custody is required to know the source of recovered contraband as well as to recover the i-20 car used in the commission of the crime. Still further, country made pistol and 04 live cartridges are yet to be recovered in the present and in the considered opinion of this Court, the custodial interrogation of the petitioner will be required in the peculiar facts and circumstances of the present case.

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

*“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.”
8. Thus, finding no merits, the present petition is ordered to be dismissed.

10.09.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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