



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

**CRM-M-45681-2024
DECIDED ON: 18.09.2024**

KHEM CHAND**.....PETITIONER****VERSUS****STATE OF HARYANA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. R.K Chaudhary , Advocate
for the petitioner.

Mr. B.S Virk, Senior DAG, Haryana

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 482 of the BNNS, 2023, for grant of anticipatory bail to the petitioner in case FIR No. 608, dated 24.07.2024, under Sections 22 of NDPS Act, 1985, registered at Police Station Sector 58, District Fariabad.

2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case and alleged recovery of 21.695 kg of ganja has been effected from co accused and has rather been roped in on the basis of disclosure statement of one Ramjeet. Besides, he submits that the petitioner is a doctor by profession and has nothing to do with the recovered contraband.

3. Notice of motion.

4. On the asking of Court, Mr. B.S Virk, DAG Haryana, accepts notice on behalf of respondent-State and submits that the alleged contraband

ie. 21.695 kg of ganja has been recovered in the present case and petitioner's

role has come out to be that of the supplier. The quantity alleged to have been recovered falls under the commercial quantity, which attracts Section 37 of the NDPS Act. Thus, the petitioner is not entitled to be released on anticipatory bail.

5. Having heard learned counsel for both the parties.

6. Drug addiction is a societal scourge that devastates individuals and communities, while drug trafficking has far-reaching consequences that undermine economies and fuel illicit activities, including terrorism. The use of narcotic drugs destroys lives, eroding an individual's humanity and reducing them to a mere shadow of their former self. As the grip of addiction tightens, users sacrifice their dignity, well-being, and ultimately, their very existence. It is the legislature's imperative to mitigate the harmful effects of drugs and substances on society, and to protect citizens from the ravages of addiction and the illicit drug trade.

7. It's important to remember that while an accused in a murder case may take the life of one or two individuals, those involved in narcotics trafficking are responsible for causing the deaths of numerous innocent young people who are vulnerable to addiction. The harmful effects of drug trafficking have a devastating impact on society, making those involved a significant threat to public safety. Even if released temporarily, it's likely that they will continue their illegal activities, prioritizing profits over human life and perpetuating a dangerous cycle of addiction and exploitation. In the present prevailing scenario, the drug trafficking, trading and its use has acquired dimensions of an epidemic which not only effects the economic policies of the State but corrupts the system apart from leaving the impact of producing sick society. I will not be shy of saying that anti drug justice is a criminal

dimension of social justice as drug addiction forms vitals of the society along-with illicit money generation by drug trafficking.

8. In fact, the jurisdiction of the Court to grant bail is circumscribed by the provision of Section 37 of NDPS Act specifically observing that bail can be granted only if reasonable grounds are there to believe the innocence of the accused added with the fact that he is not likely to commit any offence while on bail. The mandate as envisaged under section 37 of the NDPS Act needs to be followed which reads as under:

“37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— (a) every offence punishable under this Act shall be cognizable; (b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

9. Going a step further it is negative burden casted on the petitioner to disapprove the case of prosecution as per the mandate of Section 37 of the NDPS Act which discloses that the offences are cognizable and non-bailable.

10. As per the allegations 21 kg of ganja was recovered from possession of the co accused and there is no denial to the same that petitioner was named in the disclosure statement of one Ramjeet and that person has attributed the role to the petitioner as the supplier of the same. But the benefit of being named in the disclosure statement can be no longer taken in the view of the Apex court judgement rendered in the case of ***The State Of Haryana versus Samarth kumar 2022 (3) RCR (Criminal) 991*** wherein it has been 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 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 the High Court fell into an error in granting anticipatory bail to the respondents.”*

11. Besides, petitioner is the supplier of the alleged contraband and is involved in another case as well i.e FIR No. 55 dated 26.02.2020 under section 20 of NDPS Act registered at police station Hathin, Palwal, also the counsel has failed to put forth the ulterior motive on behalf of co accused as to why he has been falsely nominated as an accused in his disclosure statement, meaning thereby somewhere or the other petitioner is connected with the alleged contraband.

12. This court is cognizant of the principle laid down by the apex court that the Advantage of decision reported in Tofan Singh judgment (supra) may be taken in regular bail application or at time of final hearing after conclusion of trial not at the time of seeking Anticipatory bail, therefore, this petition fails.

13. In the light of above, considering the huge quantity of the contraband recovered and the manner in which the *modus operandi* is evident,

wherein the petitioner is alleged to be actively involved, thus court deems it appropriate to deny the concession at this stage and to warrant for custodial interrogation to unearth the nexus of this drug trafficking, therefore petition deserves to be dismissed having no merits.

14. Hence, the same stands dismissed with no order as to costs.

18.09.2024
Sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>