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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision : 05.12.2024

Himanshu Jain

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

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

Mr. Vinjay Kumar Malhotra, DAG Punjab

KIRTI SINGH, J.(Oral)

1. Apprehending arrest in FIR No.82 dated 19.04.2024, under Section 21 of the NDPS Act, 1985 registered at Police Station Balongi, Punjab, the petitioner has preferred this petition under Section 482 BNSS, 2023 for grant of pre-arrest bail.

2. The contents of the above-mentioned FIR are reproduced herein below :-

“Copy of Rukka: S.H.O., Police Station Balongi, Jai Hind. Today, I-SI along with ASI Rajinder Singh No. 704/SAS Nagar, HC Bikram 1909 along with government Vehicle bearing No. PB 65 AH 3661, of which driver is CT-Amritpal Singh 2143 along with laptop, printer and with investigation kit was busy to conduct investigation by making search operation on suspense of bad persons at Balongi/in the area of Mohall. Then at about 01:30 a.m. I-SI when reached at Balongi Barrier near the bridge, the an informant has given information to me-SI separately that Akashdeep Singh @ Deepu son of Karnail



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Singh, resident of village Chakla, Police Station Sadar Morinda, District Rupnagar who does the business of supplying intoxicated material. Who is living in a rented accommodation/room at Balongi, near water tank, in the P.G. of Kanta Devi at Top Floor. If at this time the police party conduct raid at that place then you may get 'Heroin etc' in a large quantity. The information is believable, which fulfils the recommendation vide under Section 21-61-85 of NDPS ACT. Thus, by writing the Rukka for lodging the FIR under Section 21-61-85 of NDPS ACT against the above-mentioned Akashdeep Singh @ Deepu is being sent to the Police Station through Constable-Amritpal Singh 2143. By lodging the FIR, the no. should be intimated. Special reports should be issued, Senior officers should be intimated in this regard. I-SI along with co-employees is going busy to conduct the investigation in the P.G. of Kanta Devi. Boundary of: Balongi Barrier, Time : 02:00 a.m., Sd/- Harbhej Singh, SI, CIA Staff, District SAS Nagar, dated 19.04.2024. On receiving the case, an FIR has been registered against the above-mentioned accused for committing aforesaid offence. In- charge Control room, District SAS Nagar has been informed telephonically. The Investigation got conducted. The copies of the FIR's by preparing the special reports is being sent to the nearest Illaqa Magistrate through PHG-Narinder Kumar and to the Senior Officers. The case file along with original Rukka is being sent to the nearer SI-Harbhej Singh at Kharar through constable-Arinda. The MHC Police Station has been instructed for completion of records."

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case. He has been nominated on the basis of disclosure statement of co-accused Akashdeep Singh @ Deepu and he is a man of clean antecedents. Learned counsel has placed reliance on judgments passed in



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3310/2023 titled as ***Jagroop Singh vs. State of Punjab*** decided on 12.07.2023, SLP (Crl.) No. 1266/2023 titled as ***Vijay Singh vs. State of Haryana*** decided on 17.05.2023, ***Nek Chand @ Neka and another vs. State of Haryana, 2015(2) RCR(Criminal) 691***, Crl. Appeal No. 3173 of 2024 titled as ***Jalaluddin Khan vs. Union of India***, decided on 13.08.2024 and SLP (Crl.) No. 8781 of 2024 titled as ***Manish Sisodia vs. Directorate of Enforcement*** decided on 09.08.2024.

4. Per contra, learned State counsel has vehemently opposed the submissions made by the learned counsel for the petitioner. Learned State counsel while placing reliance upon the status report dated 12.11.2024 submits that the petitioner and his brother namely Shubham Jain are engaged in business of supply of narcotic substance and they had hired the co-accused Akashdeep for transportation of narcotic substance and used to pay him for the same. The CDR obtained reflects that the petitioner was in constant touch with co-accused.

5. Heard the rival submissions made by learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of ***State of Haryana Versus Samarth Kumar, 2022 LiveLaw (SC) 622***, 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. This Court in the case of **Gurpreet Singh Versus State of Punjab, CRM-M-44196-2022, decided on 23.09.2022** had dismissed the anticipatory bail petition of an accused who had been named in a disclosure statement of the arrested accused. An SLP No.9680/2022 was preferred against the said order and the said SLP was dismissed by the Hon'ble Supreme Court vide order dated



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8. In view of the aforementioned discussions and in view of the serious allegations leveled against the petitioner and to unearth the true dimension of the alleged crime, this Court does not deem it appropriate to interfere in the matter so as to grant the concession of anticipatory bail to the petitioner at this stage.

8. The petition is dismissed.

(KIRTI SINGH)
JUDGE

05.12.2024
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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No