



CRM-M-56109-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-56109-2024 (O&M)

Date of Decision : 16.12.2024

ANKIT

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Jasinder Singh Sekhon, Advocate for the petitioner.

Mr. Vinay Kumar, DAG, Punjab.

KIRTI SINGH, J.(Oral)

1. Apprehending arrest in FIR No.137 dated 17.08.2024, under Section 22 of the NDPS Act, 1985 (Section 29 of NDPS Act added later on) registered at Police Station Bullowal, District Hoshiarpur, the petitioner has preferred this petition for grant of pre-arrest bail.

2 The translated version of the FIR is reproduced below:-

“Station House Officer, Police Station Bullowal, "Jai Hind". Today I ASI along with ASI Sukhdev Singh No.796/HSP, CT. Harmanpreet Singh 1034/HSP along with laptop, printer, pen drive in the Government vehicle, driver thereof is ASI Karnail Singh No.403/HSP, went to the side of village Talwandi Araiyan from Police Post Sham Chorasias regarding patrolling and checking of suspicious persons. When police party was checking the passerby vehicles by imposing barricading at village Talwandi Araiyan during patrolling then during checking after some time, one scooty was seen coming in high speed from the side of village Dhamiya. I ASI signaled it with the torch light under suspicion. The driver of which suddenly stopped his scooty and tried to turn back and scooty fell down on the side of road. I ASI apprehended them on the basis of suspicion and asked their name/address, the scooty driver disclosed his name as Pardeep Singh son of Paramjit Singh resident of Dhamia Kalan PS Bullowal and pillion rider disclosed his name as Gurpreet Singh son of Kuldeep Singh, resident of Chak Raju Singh, PS Bullowal, District Hoshiarpur. To whom after I introducing my identity told that I ASI Kulwinder Singh No.326/HSP Police Post Sham Churasias is posted as investigating officer. The name plate of my name has been affixed on



my uniform and police party is with me in uniform. I have suspicion of some objectionable article with you. I want to search you but you have a legal right that if you want to get yourself searched in the presence of any gazetted officer or Illaqa Magistrate then it can be arranged on the spot or you can be brought before any gazetted officer or Illaqa Magistrate. Upon which, I ASI issued the notice u/s 50 of NDPS Act separately to Pardeep Singh and Gurpreet Singh, who told that we have complete faith on you, you can search us. Upon which, I ASI have prepared consent memos of Pardeep Singh and Gurpreet Singh separately and upon which, Pardeep Singh and Gurpreet Singh appended their signatures. The efforts were made to join the public witness in police party before searching Pardeep Singh and Gurpreet Singh but every passerby showed their helplessness and no one joined the police party. Upon which, ASI firstly conduct the personal search of Pardeep Singh then one black coloured heavy polythene bag was recovered from right pocket of his capri, which was opened and transparent bag carrying intoxicating power was recovered. Upon weighing the recovered intoxicating power on computer scale from investigating bag by me/ASI, 68 grams intoxicating power was recovered. After preparing the parcel by putting it in same polythene bag, I ASI attest the same with my seal KS and sample seal has been. Prepared separately. Seal after use has been handed over to ASI Sukhdev Singh 796/HSP. Thereafter, personal search of Gurpreet Singh was accordingly conducted then no objectionable substance was recovered from him. Parcel of 68 grams intoxicating substance and scooty bearing No.PB-07T-9250 have been taken into police custody through separate memos. Accused Pardeep Singh has committed offence us 22-61-85 of NDPS Act for keeping 68 grams intoxicating power. Upon which, after recording the ruqa, it is being sent to police station through PHG Gurmail Singh 25791 for registration of case. After registering the case, FIR number be intimated. Special reports be issued. Control room and senior officers be informed. The information under Section 42(2) of NDPS Act has already been sent through PHG Gurmail Singh 25791. I ASI along with fellow officials is busy in investigation. Today in the area of Police Post Talwandi Araiyan at 10:30 PM. Sd/ - Kulwinder Singh ASI PP Sham Chorasi PS Bullowal dated 17.08.2024. Today at police station: On receipt of above said writing to the police station, after registering the case under above offences, original writing along with copy of FIR is being sent on the spot to ASI through PHG. Special reports are being sent to Illaqa Magistrate and senior officers through ASI Daljinder Singh 1164/HSP. After registering the case, control room and senior officers be informed through wireless message. Closing Rapat No.42 dated 17.08.2024.”



3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in this case. Allegedly a recovery of 68 grams of heroin was made from the co-accused. The petitioner has only been nominated on the basis of disclosure statement of co-accused-Ramandeep @ Monu @ Molo and nothing is recovered from him. Learned counsel has placed reliance on judgments passed by Hon'ble Supreme Court in ***Roji @ Dimpi Vs. The State of Punjab***, SLP (Crl.) No. 8976/2023 and judgment passed by the Co-ordinate Bench of this Court titled as ***Babu Singh vs. State of Punjab Law finder Doc ID # 1908149***.

4. In compliance to order dated 12.11.2024, short reply has already been filed by the learned State counsel. He submits that the present petitioner is involved in multiple FIRs under NDPS Act, reflecting his continued involvement in illicit activities and is involved in supplying heroin in the area and is contributing to the destruction of the local youth. The petitioner is a habitual offender, with the following cases registered against him:

1. **FIR No. 196 dated 01.09.2024** under Sections 21-B, 29/61/85 of the NDPS Act at PS Model Town, Hoshiarpur and same is pending for trial.
2. **FIR No. 283 dated 26.11.2023** under Sections 21/29-61-85 of the NDPS Act at PS Model Town, Hoshiarpur, and same is pending for trial.
3. **FIR No. 74 dated 17.04.2022** under Sections 22/29-61-85 of the NDPS Act at PS City, Hoshiarpur, and same is pending for trial.

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

7. The Hon'ble Supreme Court in the case of ***State of Haryana Versus Samarth Kumar*** (supra), 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]



8. A perusal of the aforementioned judgment would clearly show that though the recovery from the principal accused was of commercial quantity of contraband, no distinction whatsoever has been drawn by the Hon'ble Supreme Court with respect to the recovery from the principal accused being of commercial/non-commercial quantity being a determining factor for the grant of bail to the person named in the disclosure statement.

9. 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 07.11.2022.

10. There are serious allegations levelled against the petitioner. Recovery of 68 grams of heroin was made from the co-accused. The petitioner has been nominated on the basis of disclosure statement of co-accused. There are three other cases registered against him under NDPS Act. Accordingly, 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.

11. The petition is dismissed.

Pending application(s), if any, also stands disposed of accordingly.

(KIRTI SINGH)
JUDGE

16.12.2024
Kavita

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