

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

213

CRM M-65130 of 2023

Date of Decision: 16.01.2024

Ajay Singh

...Petitioner

Versus

State of Haryana

... Respondent

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

Present : Mr. Amit Chaudhary, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 438 of the Cr.P.C. with a prayer to grant pre-arrest bail to him in case FIR No.793 dated 26.11.2023 registered under Section 21(b) of the NDPS Act, 1985 at Police Station Sirsa City, District Sirsa (Haryana).

2. The FIR in the present case was registered on the basis of the statement made by SI Surender Kumar and the same has been reproduced below:-

“Today I ASI/HC Pooja 278/Sirsa, ESI Ramesh Kumar 570 EHC Ravidas No.612/Sirsa, along with HGH Gurdyal Singh No. 4595 along with personal laptop and printer and on a Govt. Vehicle HR-24GV-7788 driven by CT Harpreet Singh No.1208 were present on patrolling and were going Satnam Chowk Sirsa from Kanganpur Road and when we reached little ahead from master wali gali towards Satnam Chowk, then one person, who was

wearing a cap, black mask, wearing white colour t-shirt and lower of black and red colour was seen coming and after seeing the police party ahead, he suddenly turned back and started walking briskly. Then I SI on suspicion stopped the vehicle and came out from the vehicle along with the fellow officials and apprehended the said person and asked his name. The suspect disclosed his name as Bhura Singh @ Bhuria son of Ranjeet Singh resident of Master Wali Gali Kanganpur Road, Sirsa. I, SI, on suspicion of having intoxicating substance, prepared a memo separately and gave a notice under Section 50 of NDPS Act to suspect Bhura Singh @ Bhuria son of Amarjeet Singh resident of Master Wali Gali Kanganpur Road, Sirsa. SI Surender Kumar No. 1508/ HSR Crime Branch Sirsa informed through this notice that Bhura Singh @ Bhuria son of Amarjeet Singh resident of Master Wali Gali Kanganpur Road, Sirsa was suspected of keeping some intoxicating substance and in this regard his search was necessary and for conducting his search, Ilaqa Magistrate or any Gazetted Official could be called on the spot or for conducting his search, he could be produced before them. It is his legal right. Thereafter, suspect Bhura Singh @ Bhuria son of Amarjeet Singh resident of Master Wali Gali Kanganpur Road, Sirsa, after understanding the notice, gave reply to the notice on which I SI as per his words prepared a reply to the notice Section 50 of NDPS Act as per rules separately "That/Bhura Singh @ Bhuria son of Amarjeet Singh resident of Master Wali Gali Kanganpur Road, Sirsa is illiterate. He can sign only. He had heard and understood the notice given at the instance of SI Surender Kumar No.1508/ HSR Crime Branch Sirsa. He

wanted to get his search conducted from Gazetted Official by calling him on the spot. On which I, SI called up on mobile No.93153-53689 of Sh. Kuldeep Dhanda AEE T/L Sirsa and narrated the factual situation from my personal mobile No.94165-91524 and requested him to come on the spot. After a span of time Sh. ER Kuldeep Dhanda AEE T/L Sirsa reached on the spot who directed me (SI) to conduct the search of suspect Bhura Singh @ Bhuria son of Amarjeet Singh resident of Master Wali Gali Kanganpur Road, Sirsa. I, SI, after offer and reply to the offer, conducted the search of suspect Bhura Singh @ Bhuria as per rules and from the left pocket of the lower, one transparent polythene, in which heroin was recovered, which was measured through electronic weighing scale and polythene 18 grams of heroin intoxicating substance was recovered. Recovered 18 grams of heroin intoxicating substance was converted into separate parcel of cloth and sealed with my seal SK/3 and ER Sh. Kuldeep Dhanda AEE T/L has affixed his seal KD/1. I SI handed over the seal after use to ESI Ramesh Kumar 570/ Sirsa Sh. ER Kuldeep Dhanda AEE T/L kept his seal with himself after use. Sample sealed parcel of heroin intoxicating substance along with sample seal have been taken into police custody by preparing the seizure memo. On which suspect Bhura Singh @ Bhuria and the witnesses have signed and Sh. Kuldeep Dhanda, AEE T/L have also attested that Bhura Singh @ Bhuria abovesaid has committed the offence under Section 21(b)-61-85 of NDPS Act by keeping the possession of 18 grams of heroin intoxicating substance”.

3. Learned counsel for the petitioner contends that as per the story of the prosecution, on 26.11.2023, Bhura Singh @ Bhuria was arrested by the police as he was keeping in his possession 18 grams of heroin wrapped in a glazed paper without any permit or licence. However, during the course of investigation, a disclosure statement was allegedly suffered by Bhura Singh @ Bhuria, who alleged that the petitioner had supplied the recovered contraband to him. Learned counsel further contends that in the present case, since 18 grams of heroin, i.e. non-commercial quantity, was recovered from Bhura Singh @ Bhuria, co-accused, so the rigors of Section 37 of the NDPS Act would not apply to the facts of the present case. Still further, the petitioner was in relationship with a girl, namely, Divya and Bhura Singh @ Bhuria, is her real maternal uncle (mama). The family of Divya was unhappy with the relation of petitioner and Divya. On 15.12.2023, the petitioner had solemnized the marriage with Divya against the wishes of her family. Due to this grudge, Bhura Singh @ Bhuria and other family members of Divya were looking for a suitable occasion to falsely involve the petitioner in a criminal case. Learned counsel further contends that in the present case, except the disclosure statement suffered by Bhura Singh @ Bhuria, there was no admissible evidence against the present petitioner. He further contends that the confession suffered by the co-accused can never be treated as substantive evidence and the petitioner was entitled to the concession of anticipatory bail. Learned

counsel also relied upon, the law laid down by the Honble Supreme Court in the matter of **Tofan Singh Vs. State of Tamil Nadu, 2021(4) SCC 1.**

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner. Learned State counsel submits that the petitioner is also facing one more criminal case in FIR No. 1072 dated 27.11.2021 under Sections 21-B/61/85 of NDPS Act, registered at Police Station Sadar Hisar. Learned State counsel further submits that in the present case, the petitioner had supplied/sold the contraband to Bhura Singh @ Bhuria, co-accused. He further submits that the custodial interrogation of the petitioner was required by the police for further investigation of the present case. Even the source of the recovered heroin was yet to be inquired into from the petitioner and even the petitioner was to be interrogated with regard to the amount, which he received by selling the heroin. Thus, the petitioner was not entitled to the concession of anticipatory bail in the present case. Learned State counsel has also relied upon the law laid down by the Hon'ble Supreme Court in the matter of ***“State of Haryana Vs. Samarth Kumar”, 2022 LiveLaw (SC) 622***, wherein the Hon'ble Supreme Court has 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.”*

5. Learned State counsel has also placed on reliance on the order passed by the Hon'ble Supreme Court in the matter of **Parwinder Singh Parminder Kumar @ Vicky Vs. State of Punjab** arising out of S.LP. (Crl.) No. 12601 of 2023, wherein the Hon'ble Supreme Court has held as under:-

4. It is true that it is a case of recovery of non-commercial quantity of the contraband and as such rigors of Section 37 of the NDPS Act are not attracted. It is also a matter of record that a coordinate Bench of this Court granted interim protection to the appellant on 06.10.2023 and pursuant thereto, he joined the investigation, which is now complete. The Chargesheet has also been filed. The question, however, that arises for consideration is whether the appellant deserves to be extended the benefit of pre-arrest bail in a case of recovery of contraband like heroin and when he is also found involved in one more case under the NDPS Act?

5. Having heard learned counsel for the parties, we are of the considered view that the parameters of granting bail in a case under special statutes like NDPS Act may not be liberally construed in the instant case. We say so taking notice of the fact that the State of Punjab is

reeling under the grip of drug menace. There are several drug lords whose roots are identifiable in the State of Punjab, and who operate in the cross-border drug racketing and organized trafficking of narcotic drugs and psychotropic substances. It is a matter of common knowledge that huge cache of illicit drugs is smuggled across the border. Some local Pharmaceutical Industries, State police officials and other affluent people have been suspected to be involved, at occasions, in international drug trafficking. The drug addiction has posed a serious threat to the once vibrant state of Punjab. The Courts, therefore, ought to be highly circumspect while granting bail, especially to a repeat offender. The appellant, as it seems from the allegations, is a drug peddler and there is every likelihood of his returning to the same illicit trade once he is allowed the privilege of pre-arrest bail.

6. We are, thus, of the opinion that the appellant does not deserve the concession of anticipatory bail. However, the appellant, like his co-accused, shall be at liberty to apply for regular bail. If such an application is moved, the same shall be decided by the learned Special Judge as early as possible and preferably within two weeks.

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

8. It is apparent from the case of the prosecution that in the present case, Bhura @ Bhuria, co-accused was arrested by the police while he was carrying 18 grams of heroin in his conscious possession and the recovery was effected from him after following the due process of law. During the course of investigation, he clearly stated

that he had purchased the heroin from the present petitioner. Thus, in the considered opinion of the Court, the custody of the petitioner would be required to know the source of recovered heroin and also the details with regard to the purchasers, who had purchased the contraband from the present petitioner. Apart from that, the petitioner is also involved in one more case, i.e., FIR No. 1072 dated 27.11.2021 under Sections 21-B/61/85 of NDPS Act, registered at Police Station Sadar Hisar and does not deserve the concession of anticipatory bail from this Court.

9. Thus, finding no merits, the present petition is ordered to be dismissed.

16.01.2024	(N.S.SHEKHAWAT)
amit rana	JUDGE
Whether reasoned/speaking	: Yes/No
Whether reportable	: Yes/No