

IN THE COURT OF POOJA ANDOTRA,
JUDGE SPECIAL COURT, TARN TARAN.
(UID Number PB0218)

PBTT010056622024



Presented on : 11-11-2024
Registered on : 12-11-2024
Decided on : 19-11-2024
Duration : 0 years, 0 months, 8 days

Case Type	BA
Filing Number	4778/2024 Filing Date: 11.11.2024
Case Number	2792/2024 Registration Date: 12.11.2024
Case Code	PBTT0100-5662-2024
Date of Order	19.11.2024

Surinder Singh, aged about 39 years, son of Rattan Singh, resident
of village Rasulpur, Tehsil and District Tarn Taran.

...Applicant/accused

Versus

State of Punjab

...Respondent

FIR No.130/25.09.2024
Under Section 18(c), 29 of NDPS Act
Police Station, Sadar Tarn Taran

BAIL APPLICATION UNDER SECTION 482 of B.N.N.S.

Present: Shri Gagandeep Singh Rana, counsel for the applicant/accused
Shri Harmanjot Singh, Additional Public Prosecutor for State

ORDER

1. The above named accused has filed this application for the
grant of anticipatory bail under Section 482 of Bharat Nagrik Suraksha
Sanhita, 2023 (hereinafter referred to as B.N.N.S.) in the afore referred
F.I.R.

2. Notice of the bail application was given to the State. Learned Additional Public Prosecutor for the State has opposed the bail application. Police record has been requisitioned. Ahlmad has reported the fact that no previous bail application has been filed or decided by any Court qua this accused in this FIR. Investigating Officer has stated that no other FIR has been registered against the present applicant/accused. He has not been declared as proclaimed offender in this case.

3. It was argued by the learned counsel for the applicant/accused that he has been falsely implicated in this case due to some enmity. There is no evidence with the prosecution to connect the applicant/accused with the alleged offence. Whole story is concocted by the prosecution. Nothing is to be recovered from the applicant/accused. Applicant is ready to join the investigation as and when required by the Court. Prayer has been made for granting the concession of anticipatory bail.

4. On the other hand, main contention of learned Additional Public Prosecutor for the State was that the accused/applicant had been the source of the recovered substance and that his custodial investigation was imperative since it was yet to be unearthed as to from where the accused/applicant had been procuring narcotics for supply.

5. The very pith of the allegations of the prosecution being that on 25.09.2024, accused Resham Singh was arrested and recovery of 4 Kilogram 300 grams of opium was effected from him, consequent to which the FIR in question was registered. During the course of investigation, above named accused suffered disclosure statements upon which accused/applicant Surinder Singh was nominated and section 29 of

NDPS was incorporated accordingly through DDR no 32 dated 27.09.2024.

6. In **Gurbaksh Singh Sibbia v. State of Punjab, (SC)**: Law Finder Doc Id # 104574 reported in 1980 AIR(SC) 1632, **Sushila Aggarwal and others Petitioners Versus State (NCT of Delhi) and another-Respondents**: Law Finder Doc ID # reported in 2020 AIR (SC) 831 Honorable Supreme Court of India has pleased to set the guidelines:-

- a) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- b) *The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment of conviction by a court in respect of any cognizable offence;*
- c) *The possibility of the applicant to flee from justice;*
- d) *The possibility of the accused's likelihood to repeat similar or other offences;*
- e) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- f) *Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*
- g) *The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is Implicated with the help of Section 34 and 149 of the Indian Penal Code, 1860 the Court should consider with even greater care and caution, because over implication the cases is a matter of common knowledge and concern;*
- h) *While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- i) *The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- j) *Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the course of events, the accused is entitled to an order of bail.*

7. Apparently, the take of Ld. counsel for the accused/applicant was that no recovery had been effected from the possession of the accused and that he had been arraigned as an accused merely on the basis of the disclosure statements made by co-accused Resham Singh.

8. On the other hand, it was emphatically argued by learned APP for the State that the accused/applicant, as a matter of right, was not entitled to the grant of anticipatory bail more particularly when it has emerged in the investigation that the recovered Heroin had been supplied by him. He placed reliance upon judgment passed by ***Hon'ble Supreme Court of India in case titled as State of Haryana v. Samarth Kumar (SC) : Law Finder Doc Id # 2015791 2022(3) R.C.R.(Criminal) 991 : 2022 Cri. L.R. (SC) 994*** wherein it was held:

'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.'

Similarly, ***Hon'ble Punjab and Haryana High Court in case titled as Vijay Singh vs State of Haryana bearing CRM-M-55539-2022, date of decision 6.12.2022 had held:***

'8. 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 rested accused. An SLP No. 9680/2022 was preferred against the said order and the said SLP was dismissed by the Hon'ble Supreme Court wide order dated 7.11.2022.

9. Thus, it is a settled principle of law that anticipatory bail cannot be granted to a accused who has been named in the disclosure statement of the arrested accused.'

9. Needless to say, the investigating agency is yet to delve into the aspect as to from where the narcotic substance was being procured and what was the supply pattern of the same. The possibility of the investigation on this count getting derailed in case anticipatory bail is

granted to the accused/applicant is very much real and immediate. Hence no ground is made out to grant anticipatory bail to the accused/applicant.

In view of above discussion and observations, the present bail application is ***dismissed***. Bail application file be attached with the main file/consigned to the record room.

Announced: 19.11.2024

Pooja Andotra
Judge Special Court
Tarn Taran.
UID Number PB0218

Lovepreet, Stenographer Grade-II