

**IN THE COURT OF KAWALJIT SINGH,
JUDGE SPECIAL COURT (DUTY), TARN TARAN.
(UID Number PB0155)**

Case Type	BA
Filing Number	3081/2023 Filing Date: 14.06.2023
Registration Number	1745/2023 Date of Registration: 15.06.2023
CNR Number	PBTT0100-3574-2023
Date of Decision	30.06.2023

Kesar Singh, aged about 28 years, son of Balbir Singh, resident of village Bhullar, Tehsil and District Tarn Taran.

---Applicant/accused

Versus

State of Punjab

---Respondent

FIR No.66 dated 09.04.2022

Under Section 21 of NDPS Act and offence under Section 29 of NDPS
Act, added later on vide DDR No.14 dated 10.04.2022
Police Station, Sadar Tarn Taran

BAIL APPLICATION UNDER SECTION 438 of Cr.P.C.

Present: Shri A.S. Dhillon, Advocate for applicant/accused
Shri Gurpreet Singh Rana, Additional P.P. for the State

ORDER

File put before me, I being on duty during summer vacations.

Applicant/accused has filed the instant bail application under Section 438 Cr.P.C., seeking anticipatory bail in the above noted case.

2. It is argued by the learned counsel for the applicant/accused that FIR has been registered against one Karanbir Singh son of Jaswant Singh resident of village Padhri Kalan, District Tarn Taran. But later on applicant/accused has been falsely and wrongly nominated in the present case on the basis of alleged disclosure statement allegedly suffered by co-accused vide DDR No.14 dated 10.04.2022. Applicant/accused only came to know regarding his nomination in the present FIR when the police of

police station Sadar Tarn Taran started conducting raids at the house of applicant/accused. Applicant/accused is working as a Gym Trainer and nothing is to be recovered from the applicant/accused and his custodial interrogation is not required. Except the present case, applicant/accused has been also falsely implicated in case FIR No.104 dated 25.06.2019 under Sections 354, 341, 34, 506, 324, 148 and 149 of IPC and Sections 25, 27 of Arms Act, registered at Police Station Sadar Tarn Taran in which he is on bail. It is prayed that the applicant/accused may kindly be granted the concession of anticipatory bail.

3. On the other hand, learned Additional Public Prosecutor for the State opposed the bail application and prayed that bail may kindly be dismissed. It is submitted that originally accused Karanbir Singh son of Jaswant Singh were arrested and from his conscious possession 4 grams of heroin was recovered. It is submitted the during investigation it surfaced from the disclosure statement of above said accused that he used to purchase heroin from applicant/accused. It submitted that it is prima facie established that applicant/accused also is involved in this conspiracy of smuggling of heroin and drug peddling. It is submitted that custodial interrogation of the applicant/accused is necessary as more recoveries of heroin or other narcotics is expected as earlier also applicant/accused is found indulging in such types of nefarious activities and one FIR stand registered against him.

4. I have considered the contentions raised by both the sides.

5. I have considered the contentions raised by both the sides. As per the allegations of the prosecution and investigation conducted thus far it comes out that from the co-accused of the applicant/accused Karanbir

Singh heroin was recovered. From disclosure statement made by accused named in FIR that that he has purchased this heroin from applicant/accused and he has been nominated in this case FIR as he is involved with co-accused in this conspiracy of smuggling of heroin.

6. Only contention of the learned counsel for the applicant/accused for grant of anticipatory bail in view of the judgment cited as *Tofan Singh versus State of Tamil Nadu*, 2021 (1) R.C.R. (Criminal) 1, that the disclosure statement of co-accused is inadmissible is concerned, it is apposite to make a reference to the order of Hon'ble The Supreme Court of India in the case of **Prabhulal versus Central Bureau of Narcotics, wherein the SLP (Criminal) 6744/2022** wherein also the matter involved was of the nomination of accused on the disclosure statement of co-accused and finally dismissing the pre-arrest bail application vide order dated 14.12.2022, affirming the order of dismissal of anticipatory bail by Madhya Pradesh High Court, observed as under:-

“We have heard learned counsel for the parties. We find no reason to grant pre-arrest bail to the petitioner as prayed for. The Special Leave Petition is, accordingly, dismissed.

The interim protection granted by order dated 11.10.2022 stands vacated in view of the dismissal of the special leave petition.

However, if the petitioner surrenders and apply for regular bail, the same may be considered by the Trial Court as expeditiously as possible on its own merits in accordance with law.”

7. Furthermore in another case titled as **State of Haryana versus Samarth Kumar**, (2022) 3 RCR (Criminal) 991: LiveLaw

(SC) 622, question as to whether concession of dictum of law laid down in the case of **Tofan's case (supra)** can be considered at the time of consideration of pre-arrest bail claimed by applicant/accused came up before Hon'ble The Supreme Court of India and Hon'ble Supreme Court of India observed 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 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 in (2021) 4 SCC 1**.

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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 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 vs. 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 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

Appellate-State is entitled to take steps, in accordance with law.”

8. Relying upon above said decisions of Hon’ble Supreme Court of India and our own Hon’ble High Court of Punjab and Haryana in a decision in case cited **Jaskaranjit Singh @ Bath versus Narcotics Control Bureau, passed on 21.12.2022 in CRM-M-58768-2022**, against the order of dismissal of anticipatory bail application passed by the court of undersigned has observed that:-

“The sole ground taken by the petitioner for grant of anticipatory bail in view of the judgment in the case of Tofan Singh (supra) that the disclosure statement of co-accused is inadmissible, has no force, as per the law laid down by Hon’ble Supreme Court of India in the cases of Prabhulal and Samarth Kumar (supra). Thus, the allegations against the petitioner call for a deeper probe, to unearth the modus operandi, source of origin, chain of supply and find out the involvement of other persons therein, so as to also eradicate the menace of drug proliferating, for which the custodial interrogation of the petitioner is required. The grant of pre-arrest in the present case shall be detrimental to the investigation.

The stringent provisions as contained in the statute, are to deal with the drug menace, plaguing the society, as the youth are being led on a path having deleterious effects, thereby destroying the very social fabric.

Keeping in view the aforesaid, this Court is not inclined to grant the concession of anticipatory bail to the petitioner. As a sequel thereto, the present petition being bereft of merit, is hereby dismissed.”

9. Also in another case Hon'ble Punjab and Haryana High Court in another case titled **Amritpal Singh @ Peter versus State of Punjab, CRM-M NO.58880 of 2022 (O&M)** vide order dated **20.12.2022** in appeal filed against the order of the Court of undersigned dismissing the pre-arrest bail has upheld the decision and held that no ground to grant pre-arrest bail to the petitioner is made out.

10. In the present case the investigation is at earlier stage and the police may be able to collect some more independent, corroborative and affirmative legal evidence, which can only be so done in case custodial interrogation of the applicant/accused is conducted. Applicant/accused also is earlier involved in one more FIR as stated above. In view of the facts and circumstances of the case and judicial pronouncements discussed made above no ground is made out grant discretionary relief of anticipatory bail to the applicant/accused. Accordingly this bail application is dismissed. However, it is made clear that observations made herein above shall not be construed as an expression on the merits of the main case. The bail application file be consigned to the Judicial Record Room, Tarn Taran.

Announced: 30.06.2023

**Kawaljit Singh,
Judge Special Court (Duty),
Tarn Taran.
UID Number PB0155**

Lovepreet Stenographer Grade-II