

[2022 LiveLaw \(SC\) 622](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
INDIRA BANERJEE; J., V. RAMASUBRAMANIAN; J.]
JULY 20, 2022
THE STATE OF HARYANA *versus* SAMARTH KUMAR

Code of Criminal Procedure, 1973; Section 438 - Narcotic Drugs and Psychotropic Substances Act, 1985; Section 37 - Appeal against High Court order that granted anticipatory bail on the ground that no recovery was effected from the accused and that they had been implicated only on the basis of the disclosure statement of the main accused - Allowed -The respondents may be able to take advantage of the decision in *Tofan Singh vs. State of Tamil Nadu (2021) 4 SCC 1* , perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted.

CRIMINAL APPEAL NO. 1005 OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION(CRL.) NO. 6575 OF 2021 WITH CRIMINAL APPEAL NO. 1006 OF 2022 (ARISING OUT OF SPECIAL LEAVE PETITION(CRL.) NO. 6683 OF 2021)

(Arising out of impugned final judgment and order dated 09-03-2021 in CRMM No. 25645/2020 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Anil Kaushik, AAG Mr. Rajat Rana, Adv. Ms. Anju Kaushik, Adv. Mr. Vishwa Pal Singh, AOR;

For Respondent(s) Mr. Rishi Malhotra, AOR Dr. Sanjay Gupta, Adv. Mr. Rajat Sharma, Adv. Mr. Dinesh Verma, Adv. Mr. Subhasish Bhowmick, AOR

ORDER

Leave granted.

2. Both these appeals arise out of independent orders passed by the High Court of Punjab and Haryana at Chandigarh granting pre-arrest bail to the respondents herein who were implicated for alleged offences under Sections 17, 27A and 85 of the NDPS Act, 1985.

3. Heard learned Additional Advocate General for the State of Haryana and learned counsel appearing on behalf of the respondents.

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 vs. 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 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 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.

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