

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 8<sup>th</sup> OF MAY, 2024**

**MISC. CRIMINAL CASE No. 19092 of 2024**

**BETWEEN:-**

**MOHAN S/O SITARAM GURJAR, AGED ABOUT  
32 YEARS, OCCUPATION: LABORER TEHSIL  
DETHAL, MANASA (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI ABHISHEK RATHORE – ADVOCATE)**

**AND**

**THE STATE OF MADHYA PRADESH STATION  
HOUSE OFFICER THROUGH POLICE STATION  
KUKDESHWAR NEEMUCH (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI SAMEER VERMA AND SHRI SURENDRA KUMAR GUPTA –  
P.L./G.A. FOR STATE)**

.....  
*This petition coming on for admission this day, the court passed  
the following:*

**ORDER**

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner Mohan S/o. Sitaram Gurjar under Section 482 of Cr.P.C. for quashing the FIR dated 12.10.2019, lodged at Crime No.180 of 2019 at Police Station Kukdeshwer, Neemuch for the offences punishable under

Sections 8/15 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 420 of Indian Penal Code, 1860, and for quashing the subsequent proceedings emanating there from.

3] In brief, the facts of the case are that on 12.10.2019, on the basis of a secret information received from an informer, a Bolero car bearing registration No.RJ-27-GB-3155 was apprehended, however, the persons occupying the same absconded from the scene, and from the said vehicle 357 kg of poppy straw was seized, which was kept in 21 sacks. Subsequently, co-accused Sundarlal was arrested on 29.01.2020, who in his memo prepared under Section 27 of the Evidence Act, 1872 has stated that the present petitioner was piloting the aforesaid Bolero vehicle through his motorcycle bearing registration No.MP-44-MD-8077, and thus, on the basis of the said memo, present petitioner has been arraigned in the present case.

4] Counsel for the petitioner has submitted that apart from the aforesaid memo, there is nothing on record to connect the petitioner with the offence. It is also submitted that this Court in various other cases have also allowed the petitions and has discharged the accused persons, who have been arraigned only on the basis of the memo prepared under Section 27 of the Evidence Act or Section 67 of the N.D.P.S. Act. In support of his submission, counsel for the petitioner has relied upon a decision rendered by the Supreme Court in the case of **Sanjeev Chandra**

**Agrawal & Anr. Vs. Union of India** passed in **Criminal Appeal No.1273 of 2021 dated 25.10.2021**, and also a decision rendered by the co-ordinate Bench of this Court at Jabalpur in the case of **Kamta Prasad @ K.P. Jaiswal Vs. The State of M.P.** passed in **M.Cr.C. No.1803 of 2022 dated 26.09.2022**.

5] Counsel for the State, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out. It is submitted that as per the recent decision rendered by the Supreme Court in the case of **The State of Haryana Vs. Samarth Kumar** reported as **2022 SCC Online SC 2087/LiveLaw (SC) 622**, the Supreme Court has also reflected upon the decision rendered by it earlier, in the case of **Tofan Singh Vs. State of Tamil Nadu** reported as **(2021) 4 SCC 1**, and has held that an accused can take advantage of the aforesaid decision of **Tofan Singh (supra)**, *perhaps at the time of arguing the regular bail application or at the time of final hearing*, after completing of the trial. Thus, it is submitted that the present stage when only the charge-sheet has been filed, the petition is premature as the petitioner will have ample opportunity to contest the trial and he can certainly argue that no case is made against him at the time of final hearing of the trial as provided in the aforesaid decision of Supreme Court in the case of **Samarth Kumar (supra)**.

6] Heard counsel for the parties and perused the record.

7] From the record, it is found that so far as the intimation given by the informer is concerned, it was given on 12.10.2018 at 11:15 AM, in which it is informed that the vehicle bearing registration No.RJ-27-GB-3155 is being accompanied by its driver, one Sundar S/o. Nathulal Rathore and Mohan S/o. Sitaram Gurjar (the petitioner herein), who is also the adopted son of Raghunath Gurjar and the aforesaid truck/vehicle needs to be apprehended at the earliest. Thus, it is apparent that the petitioner's name was informed to the concerned police station even before he was arrested, as he was arrested subsequently on 11.06.2023. It is also found that in the case-diary, certain CDRs are also available and according to the counsel for the State, the petitioner's location has also been found on the spot.

8] In the decision rendered by the Supreme Court in the case of **Samarth Kumar (supra)**, it is held as under:-

“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.”

(Emphasis Supplied)

**9] Whereas, in the case of Sanjeev Chandra Agrawal & Anr. Vs. Union of India passed in Criminal Appeal No.1273 of 2021 dated 25.10.2021 on which also the counsel for the petitioner has relied upon, the same reads as under:-**

“ .....

We are inclined to set aside the impugned order of the High Court directing framing charges under Sections 27-A and 29-A of the Narcotic Drugs And Psychotropic Substances Act, 1985 (for short “NDPS Act”) against the appellants, namely, Sanjeev Chandra Agarwal and Rajiv Sethi.

The factual position is that no narcotic drugs or psychotropic substances were recovered from the premises of the two appellants. As per the prosecution, 4 kilograms of Acetic Anhydride (Controlled Substance) was allegedly found from the premises of the appellants located at Gyan Scientific Agency, Varanasi. The High Court was not correct in relying on the statements made by other accused under Section 67 of the NDPS Act, in light of the judgment of this Court in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1. It is pointed out that the charges under Sections 9-A and 25 of the NDPS Act have been framed and to this extent there is no challenge and dispute.

While not interfering with the order directing framing of charges under Section 9-A and 25, direction in the impugned order to frame charges against the two appellants namely, Sanjeev Chandra Agarwal and Rajiv Sethi under Sections 27-A and 29-A of the NDPS Act cannot be sustained and is set aside.

The appeal is allowed in the aforesaid terms.

We clarify that the bail granted to the appellants has not been cancelled and we have not commented and made any observations on merits of the allegations in the charge-sheet.

Pending application(s), if any, stand disposed of.”

(Emphasis supplied)

10] So far as the decision relied upon by the counsel for the applicant in the case of **Kamta Prasad @ K.P. Jaiswal (supra)** is concerned, the same has been decided by the co-ordinate bench of this court relying upon the decision rendered by the Supreme Court in the case of **Tofan Singh (supra)**, but this Court has not considered the order passed by the Supreme Court in the case of **Samarth Kumar (supra)**. Whereas, in the case of **Sanjeev Chandra Agrawal (supra)** also, **Tofan Singh (supra)** has been relied upon but it (Tofan Singh) has been distinguished in the recent decision of the Supreme Court in the case of **Samarth Kumar (supra)**, and it has been held that it has the limited application at the time of arguing the regular bail application or at the

time of final hearing after conclusion of the trial, hence the decision rendered by the Supreme Court in the case of Sanjeev Chandra Agrawal (supra) would not have any binding precedence.

**11]** In such circumstances, this Court is of the considered opinion that on the anvil of the order passed by the Supreme Court in the case of **Samarth Kumar (supra)**, it can be safely presumed that so far as the reliance on the decision in the case of **Tofan Singh (supra)** is concerned, it is applicable for a regular bail application or at the time of final hearing, after conclusion of the trial, but not for deciding the petition challenging the charge-sheet or framing of charges on the ground that the accused is arraigned only on the basis of the memo prepared under S.27 of the Evidence Act/67 of the N.D.P.S. Act.

**12]** In view of the same, and also on the ground that CDR is also available against the petitioner, this Court is not inclined to interfere in the FIR or the charge-sheet. Accordingly, the petition being devoid of merits, is hereby **dismissed**. However, the petitioner shall be at liberty to contest the matter on merits before the trial court.

**(SUBODH ABHYANKAR)**  
**JUDGE**