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

**CRM-M-13625-2020 (O&M)
Date of Decision: 14.07.2020**

Harbans Singh

..... Petitioner

Versus

Union of India, Narcotics Bureau, Chandigarh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Pardeep Kumar Kapila, Advocate,
for the petitioner.

Mr. Sanjay Vashishth, Advocate,
for the respondent-UI.

SUDIP AHLUWALIA, J. (ORAL)

CRM-16295-2020:

For the reasons mentioned in the application, the respondent-UI is permitted to place on record its additional Reply by way of Affidavit dated 11.07.2020 along with Annexures R-1 to R-8 (Colly).

Application stands disposed off.

CRM-M-13625-2020:

The instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail in case Case Crime No.29 of 2019 dated 20.06.2019, under Sections 8, 18, 29, 25, 27-A, 31 and 60 of the NDPS Act, registered at Police Station NCB, Chandigarh.

2. The petitioner was arrested on 21.06.2019. Contraband in the

form of *opium* weighing 1.685 kgs., which is otherwise non-commercial, was allegedly recovered by the Narcotic Bureau Officers from his car on the said date, after the petitioner had apparently come from Rajasthan to the house of his brother Mahinder Singh in village Ahlupur, Police Station Sardulgarh, Mansa.

3. Substance of the allegations against the petitioner in the complaint lodged by the NCB in the Court of the Ld. Special Judge at Mansa (Annexure P-1) is that he has been consistently engaged in drugs/narcotics trafficking and had also earlier been convicted of the offences under the NDPS Act in FIR No.347 dated 29.07.2008, under Sections 15, 21-A, 61 and 85 of the NDPS Act of Police Station Ratia, in which he was convicted and sentenced to undergo imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- on 19.12.2009. After the said conviction, he filed an appeal in this Court, which is pending and he was released on bail at a later stage during the pendency of the appeal.

4. Ld. Counsel for the petitioner has emphasized that firstly recovery allegedly effected from him is below the commercial quantity, on account of which, he deserves to be released on bail after having remained incarcerated for more than a year, since 21.06.2019.

5. It has also been submitted that the alleged confessional statement given by the petitioner under Section 67 of the NDPS Act before the Narcotics Control Bureau Officers is not reliable and cannot be used against him in view of the decisions in “Union of India Vs. Jarooparam”, (SC), 2018(3) Scale 628 and “Union of India Vs. Bal Mukund”, (SC), 2009(12) SCC 161.

6. Per contra, Ld. Counsel for the respondent-UOI has opposed the

bail petition of the petitioner by submitting that first of all, in view of the earlier conviction of the petitioner for having contraband of commercial quantity, he is not entitled to any bail in the present case on account of the bar under Section 37 of the NDPS Act. Furthermore, it has been submitted that the petitioner inspite of having been released on bail by this Court following his previous conviction during pendency of the appeal has again engaged himself in illegal narcotics trafficking, and has been harboring and financing one Nibhay Ram Dhaker, a resident of Madhya Pradesh, who is currently absconding, from whom he had been regularly procuring *opium* and thereafter selling the same to others along with his brother/co-accused Mahender Singh, and that for procuring such contraband he had been regularly transferring money in the Bank account of the said Nibhay Ram Dhaker.

7. On 07.07.2020, this Court directed the respondent to place the petitioner's confessional statement under Section 67 of the NDPS Act, along with the other material to support its allegations that the petitioner has been engaged in financing or harboring anyone for illegal drugs trafficking. In response, the respondent has filed the additional Affidavit of Sh. Rahul Saini, Intelligence Officer, in the Narcotics Control Bureau as well as copies of the petitioner's alleged statement under Section 67 of the NDPS Act dated 21.06.2019 (Annexure R-1), apart from the Report of his seizure and arrest dated 26.06.2019 (Annexure R-2), the petitioners subsequent statement given during his remand (Annexure R-3) as well as details of the Bank transactions involving himself and the absconding Nibhay Ram Dhaker [Annexures R-4 to R-8 (Colly.)].

8. Having considered the submissions of both sides, along with the

material placed on record, the Court is of the opinion that this is not a fit case to release the petitioner on bail at this stage. This is so because firstly a statement given by an accused under Section 67 of the NDPS Act recorded by an authorized Officer, who is not a “Police Officer”, is normally permissible to be used as a confession against the person making it and stands excluded from the operation of Sections 24 to 27 of the Evidence Act as per decision of the Hon'ble Apex Court in “**Kanhaiyalal Vs. Union of India**”, 2008(1) RCR (Criminal) 610. As of now, this is the position of law in force, and the fact that the aforesaid decision in the case of “**Tofan Singh Vs. State of Tamil Nadu**”, 2013(4) RCR (Criminal) 631, referred for consideration by a Larger Bench, also does not render it invalid, till the final decision of the Larger Bench is forthcoming. Further, the submission that such statement is vitiated on account of any technical defect or other surrounding circumstances, such as the accused/person giving the statement was under any kind of fear, is essentially a question of fact which appropriately ought to be considered in detail only by the Ld. Trial Court while pronouncing its judgment.

9. Even otherwise, from the Bank related documents placed on record by the respondent today, it is seen that the petitioner has been regularly and consistently transferring a lot of money in the Bank Account No.31650236128 of the absconder Nibhay Ram Dhaker from his own Green Channel Card/Green Remittance Card No.0060060039884800, and from the Application Form submitted by him to secure the aforesaid Green Remittance Card, the petitioner had even shown his name as “Harbhajan Singh” instead of “Harbans Singh” on the basis of an apparently fictitious Adhaar Card, which was got issued by him ostensibly to hide his real identity, even though the

name of his father Chanan Singh has been correctly mentioned in the said Adhaar Card.

10. Furthermore, it has been reported by Ld. Counsel for the respondent that out of a total of ten witnesses to be examined from the prosecution side, as many as four witnesses have been examined in the Ld. Trial Court earlier today itself, and the matter has now been posted for further evidence on 27.08.2020. It can, therefore, also not be said that there is any strong probability of a very delayed trial taking place simply on account of the ongoing COVID-19 Pandemic as no less than four witnesses from the prosecution side have been examined on a single date, i.e., today itself. The previous conviction of the petitioner under the NDPS Act in the given circumstances, when he appears to be again actively engaged in illicit drugs trafficking, would, therefore, have the effect of bringing him within the rigors of Sections 29 and 31 apart from Section 37 itself of the NDPS Act, on account of which, he would not appear to be entitled for release on bail at this stage.

10. Dismissed.

11. It is, however, clarified that the Ld. Trial Court shall not be influenced by any of the observations made in this order and shall pronounce its judgment after completion of trial, independently on its own merits.

14.07.2020

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No