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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-36987-2020

Date of Decision: 17.11.2020

Harbans Singh

..... Petitioner

Versus

Union of India

..... 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)

This is the 3rd petition for regular bail filed under Section 439 Cr.P.C. on behalf of the petitioner, in case Crime No.29 of 2019, dated 20.06.2019, under Sections 8, 18, 29, 25, 27-A, 31 & 60 of the N.D.P.S. Act, registered at Police Station NCB Chandigarh Zonal Unit, Chandigarh.

[2]. The petitioner's last petition for regular bail was dismissed by this Court vide the order dated 14.07.2020 in CRM-M-13625-2020 (Annexure P-6). Thereafter, this petition has been filed seeking release of the petitioner on account of certain changed circumstances. Before considering the submissions raised on his behalf in the present petition, it would be apt to be apprised about the background of the case which was also noted in the previous order passed by this Court and is Annexure P-6.

[3]. 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.

[4]. 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 N.D.P.S. 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 ₹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 by suspending his sentence at a later stage during the pendency of the appeal.

[5]. It may be mentioned that in the previous petition dismissed vide order dated 14.07.2020 (Annexure P-6), Ld. Counsel for the petitioner had contended that the alleged confessional statement given by him under Section 67 of the N.D.P.S. Act was not reliable and could not be used against him in view of the decisions reported as “Union of India Vs. Jarooparam”, (SC), 2018(3) Scale 628 and “Union of India Vs. Bal Mukund”, (SC), 2009(12) SCC 161.

[6]. This Court had nevertheless rejected the above contention by relying upon the earlier decision of the Hon'ble Apex Court passed in “Kanhaiyalal Vs. Union of India”, 2008(1) RCR (Criminal) 610 and had noted that in view of the conflict in the position of law, the matter had been referred for reconsideration by a Larger Bench in the case of “Tufan Singh

Vs. State of Tamil Nadu”, 2013(4) RCR (Criminal) 631. Now according to the petitioner, the decision of the Hon'ble Supreme Court in case of *Tufan Singh's Case (Supra)* in *Criminal Appeal No.152 of 2013* has come, in which, it has been laid down as under:-

“155. We answer the reference by stating:

(i) That the officers who are invested with powers under Section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.

(ii). That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

[7]. Another submission raised on behalf of the petitioner is that there was a factual inaccuracy in the submission made on behalf of the respondent-NCB in his previous petition wherein it was mentioned that 4 witnesses from the prosecution side had been examined in the Trial Court on the very date on which the previous petition was dismissed, whereas the actual fact is that none of those witnesses was examined on that particular date (14.07.2020), and actually the last witness (PW-4) had already been examined in the Ld. Trial Court much earlier on 22.11.2019, after which, no further evidence from the prosecution side was forthcoming and the trial had become held up due to the outbreak of COVID-19 Pandemic in the interregnum. In addition, it has been also highlighted on behalf of the petitioner that the alleged recovery from him in the present case being *opium* weighing 1.685 kgs. constitutes in non-commercial quantity, on

account of which, he seeks his release from custody at this stage.

[8]. The prayer for bail has nevertheless been opposed on behalf of the respondent-NCB, and submission of Ld. Counsel for the said respondent in this regard is that the petitioner does not deserve the relief by way of his release on bail at this stage, on account of his previous antecedents by way of conviction for the offences under Sections 15, 21-A, 61 and 85 of the NDPS Act, after which, he has again engaged himself in the narcotics business, which can be verified from the fact that he consistently transferred money in the Bank Account of Absconder Nirbhay Ram Dhaker from his own Green Channel Card/Green Remittance Card, the details of which were specifically noted in Para No.9 of the earlier order dated 14.07.2020 at Annexure P-6, vide which his previous petition was dismissed.

[9]. After hearing both sides, this Court is of the view that there is only an academic change in circumstances inasmuch as the petitioner's alleged confessional statement under Section 67 of the N.D.P.S. Act is liable to be treated as inadmissible in view of the judgment of the Hon'ble Supreme Court passed in *Tufan Singh's Case (Supra)* which has been delivered recently on 29.10.2020. But the fact that he is already convicted in a previous case under the N.D.P.S. Act, for which, a sentence to the tune of rigorous imprisonment for 10 years apart from fine was awarded to him which presently has been suspended after admission of appeal against such conviction by this Court, coupled with the recovery of contraband from him which though not of commercial quantity, but being in any case substantial enough are not helpful to him apart from the fact that he has remained in close touch and regular financial transactions with Absconder Nirbhay Ram Dhaker, as already noted in the previous order, for which purpose he had

relied on a fictitious Adhaar Card obviously to hide his real identity for the purpose of remitting money time and again to the said Absconder. All these factors if seen together, are sufficient to persuade this Court that the petitioner does not deserve to be released on bail at this stage, especially when 4 out of the 10 prosecution witnesses have already been examined in the Ld. Trial Court.

[10]. For the aforesaid reasons, the present petition is dismissed but with a direction upon the Ld. Trial Court to try and endeavour to complete the trial pending before it as expeditiously as possible, and preferably within 3 months from the date of communication of this order.

17.11.2020*Bhumika***(SUDIP AHLUWALIA)
JUDGE**

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