

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 20.09.2021

1.

CRM-M-5374-2021

Bikram Singh @ Bikkar

... Petitioner

Versus

State of Punjab

... Respondent

2.

CRM-M-37169-2020

Aman Sharma

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Vipul K. Jindal, Advocate
for the petitioner in CRM-M-5374-2021.

Mr.Rishu Mahajan, Advocate
for the petitioner in CRM-M-37169-2020.

Mr.Amandeep Singh Gill, Sr.DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This order will dispose of aforesaid two petitions filed by two petitioners, i.e. Bikram Singh @ Bikkar and Aman Sharma, under Section 439 Cr.P.C. praying for grant of bail pending trial in FIR no.41 dated 19.02.2020 registered under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the Act 1985') and under

Section 25 of the Arms Act, 1959, at police Station Ranjit Avenue, District Amritsar.

Bikram Singh @ Bikkar has filed CRM-M-5374-2021 and Aman Sharma has filed CRM-M-37169-2020. The petition of Bikram Singh @ Bikkar is taken up as the main petition with the consent of the parties, and the facts are being taken from the same for the purpose of adjudication of present case.

The case of the prosecution in brief is that Inspector Sukhwinder Singh, Incharge CIA Staff, Amritsar, along with other police officials, were present at Hartej Hospital, Amritsar, in connection with patrolling in search of bad elements. At around 9.45 PM, a secret informer informed that petitioner Bikram Singh along with other accused, who were all doing the business of heroin, were sitting in one white Safari car without number and were carrying huge quantity of heroin and were also having pistols with them. On the basis of said information, Sukhwinder Singh along with police officials reached at the place where one Tata Safari car was present and the three persons who were sitting in the car, tried to run away on seeing the police party but were encircled and apprehended. After following the procedure under Section 50 of the Act, the recovery from the petitioner Bikram Singh was that of 500 grams of heroin. 1 kg. of heroin was recovered from Rohit, co-accused of petitioner. Pistol was also recovered from Rohit. Further, from the third accused Shivam, 500 grams of heroin and one pistol was recovered. It is the case of the prosecution that on the basis of disclosure statement made by co-accused Rohit to the effect that he got heroin from Aman Sharma (the petitioner in the second petition), the name of Aman Sharma was also included in the array of accused persons.

Petitioner Bikram Singh was arrested on 18.02.2020 whereas petitioner Aman Sharma was arrested on the basis of disclosure statement dated 22.02.2020. The challan has been presented and there are as many as 25 witnesses out of which only one witness has been examined. All these witnesses are stated to be police officials.

Learned counsel for petitioner Birkam Singh has submitted that in the present case, there is a complete non-compliance of Section 42 of the Act 1985. Reference has been made to ruqa dated 18.02.2020 in which it has been mentioned that the same has been sent after recording the fact that there is “secret informer” who has given information as to the whereabouts of the petitioners and other persons. It is submitted that on the basis of said ruqa, the present FIR had been registered and the secret information had not been taken down in writing independently nor was the same sent in writing to the superior police officer. Learned counsel for petitioner Bikram Singh has referred to the judgment of the Hon'ble Supreme Court dated 08.08.2011 titled as “***Rajender Singh vs. State of Haryana***” in ***Criminal Appeal no.1051 of 2009***, which was also a case in which “ruqa had been sent to the police station but however, the Hon'ble Supreme Court has held that since PW-6 Kuldip Singh had not prepared any record about the secret information received by him in writing and nor sent the same to the higher authorities and thus the same was considered as one of the main grounds for allowing the appeal”. The relevant portion of the said judgment is reproduced hereinbelow:-

“This appeal arises out of the following facts.

1. At about 4 p.m. on the 30th January 1997, PW-6 Inspector Kuldip Singh of the CIA Staff, Hisar sent Ruqa Ex. PG to Police Station Bhuna that while he was

present at the Bus Adda of village Bhuna in connection with the investigation of a case, he had received secret information that the appellant Rajinder Singh @ Chhinder, was an opium addict and also dealing in its sale, and that he had kept some opium in the shed used for storing fodder in his farm house, and if raid was organized, the opium could be recovered. On the basis of the aforesaid Ruqa, a formal First Information Report was drawn up for an offence punishable under [Section 18](#) of the Narcotic Drugs and [Psychotropic Substances Act](#), 1985 (hereinafter called the "Act"). A wireless message was also sent to the DSP, Fatehabad PW-5 Charanjit Singh to reach the spot. The effort of the police party, however, to join some independent witnesses from the public was unsuccessful. In the meanwhile, PW-5 also reached that place and the police party made its way to the farm house of the appellant. The lock on the fodder room was opened after taking the key from the appellant and searched which led to the recovery of 3.500 kilograms of opium.

.....The court further observed that it was clear from the evidence of PWs.5 and 6 that the provisions of [Section 42](#) of the Act had been complied with as the secret information received by PW-6 had been recorded by him in a Ruqa which had been sent to the Police Station for registration of a FIR and that he had also informed PW-5 on wireless about the information received by him on which the latter had reached the place of search and seizure. The trial court further noted that as the appellant was a previous convict, a lenient view could not be taken in his case. He was accordingly sentenced to undergo 20 years RI and to pay a fine of Rs.2,00,000/- and in default of payment of fine to undergo RI for 2 years. The judgment of the trial court had been

confirmed in appeal by the High Court leading to the present proceedings before us.

xxx xxx xxx We have gone through the evidence of PW-6 Kuldip Singh. He clearly admitted in his cross-examination that he had not prepared any record about the secret information received by him in writing and had not sent any such information to the higher authorities. Likewise, PW-5 DSP Charanjit Singh did not utter a single word about the receipt of any written information from his junior officer Inspector Kuldip Singh. It is, therefore, clear that there has been complete non-compliance with the provisions of [Section 42\(2\)](#) of the Act which vitiates the conviction.

xxx xxx xxx In the light of the fact what has been held above, we are not inclined to go to the other issues raised by Mr. Sadiqui. We, accordingly allow the appeal, set aside the judgments of the courts below and order the appellant's acquittal.”

Learned counsel for petitioner Bikram Singh has also submitted that in the present case fabrication with respect to the memos prepared cannot be ruled out. Reference has been made to page 219 of the paper book which contains vernacular of the statement of Inspector Sukhwinder Singh dated 18.02.2020. A perusal of the said document shows that in the head note of the said document, the FIR dated 19.02.2020 along with other details of the FIR has been mentioned. It is submitted that although the said statement is dated 18.02.2020 but it cannot be possible in view of the fact that in case the same was genuinely prepared on 18.02.2020, then the details with respect to FIR, which has been registered on 19.02.2020, could not have been mentioned in the same. To support the said argument, learned counsel has relied upon the judgment of Division Bench of this Court in

337 to contend that in such kind of a situation, only two inferences can be drawn that, either the FIR was registered prior to the alleged recovery of contraband or the number of FIR has been inserted in the document after its registration and both the situations seriously reflect upon the integrity of the prosecution version and the same is a serious lapse and creates doubt as to the prosecution theory. The relevant part of aforesaid judgment is reproduced hereinbelow:-

“29. There is another infirmity on the record which further creates a doubt about the entire prosecution case. As per the prosecution, at the time of the recovery, various documents were prepared. Those documents are Ex.PA, Ex.PB, Ex.PC, Ex.PD, Ex.PE and Ex.PF. All these memos bear the FIR number of the case. It is admitted case of the prosecution that when these documents were prepared, the FIR was not registered and FIR No. was not available as the same was registered later on, on the ruqa sent by the police. It has not been explained how all these memos contained the FIR number, which was not existing at the time when these memos were prepared. In Ajay Malik & Ors. v. State of U.T. Chandigarh, 2009(3) RCR (Crl.) 649, this Court while dealing with similar situation has observed that two inferences could be drawn from such situation, i.e. either the FIR was registered prior to the alleged recovery of the contraband or number of FIR was inserted in the document after its registration. But in both situations, it seriously reflects upon the integrity of the prosecution version. While relying upon several other decisions, it was held that such serious lapses in the prosecution case create a doubt to the prosecution theory.

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32. In view of the aforesaid discussion, the appeal is

allowed and the impugned judgment of conviction and order of sentence passed by the Judge, Special Court, Amritsar are set aside. The appellant, who is in custody, be set at liberty forthwith if not required in any other case.

Learned counsel for the petitioner Bikram Singh further submitted that no recovery of any pistol or any weapon from the petitioner has been effected.

It is thus contended that the petitioner has arguable points in the present case and since he has been in custody for the last 1 year, 6 months and 24 days, thus, he deserves the concession of regular bail.

Learned counsel for petitioner Aman Sharma has submitted that in addition to the abovesaid arguments raised by learned counsel for petitioner Bikram Singh, in the case of petitioner Aman Sharma, the said Aman Sharma has been implicated only on the basis of disclosure statement of co-accused Rohit and no recovery has been effected from Aman Sharma. He has relied upon an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled ***“Mewa Singh Vs. State of Punjab”***, in which in a case of recovery of 1.7 Kgs 'Heroin' a similar disclosure statement was made against the petitioner therein and in the said situation the petitioner therein was granted anticipatory bail. The relevant portion of the said order is reproduced hereinbelow:-

“1. The petitioner has approached this Court seeking grant of anticipatory bail in a case registered against him vide FIR No.133 dated 24.11.2019 under Section 21 NDPS Act Police Station Lohian, District Jalandhar.

2. Reply way of affidavit of Mr. Piara Singh, PPS, Deputy Superintendent of Police, Sub-Division

Shahkot, District Jalandhar (Rural) on behalf of the respondent-State has been filed, which is taken on record.

3. *The allegations in nut-shell are that Bachittar Singh was found in possession of 1.7 Kgs. 'Heroin'. During the course of interrogation, he made a disclosure statement nominating the petitioner as an accused wherein he stated that the contraband in question had been supplied by the petitioner.*

4. *Learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and was never arrested at the spot and that the alleged disclosure statement is not worth credence.*

5. *Opposing the petition, learned State counsel has submitted that keeping in view the antecedents of the petitioner his complicity is clearly evident inasmuch as he stands involved in three other cases i.e. FIR No.43 dated 2.4.2016 under Sections 15, 21, 22 NDPS Act, Police Station Sultanpur Lodhi; FIR No.5 dated 5.1.2020 under Sections 307, 186, 332, 353, 224, 225, 427, 148, 149 IPC, Police Station Sultanpur Lodhi & FIR No.193 dated 193 dated 22.11.2019 under Sections 15, 21, 25, 29 NDPS Act, Police Station Kartarpur.*

6. *I have considered rival submissions addressed before this Court.*

7. *It is not disputed that the petitioner was never apprehended at the spot and that the only evidence against him is in the shape of disclosure statement, the admissibility and veracity of which would be tested during the course of trial. As regards the other three cases which are stated to be pending against the petitioner, the learned counsel for the petitioner has submitted that even in the said cases he has been falsely implicated and was never arrested at the spot*

and has been granted anticipatory bail in all three cases.

8. *Having regard to the facts and circumstances of the case and that it is a case where the petitioner has been nominated solely on the basis of disclosure statement, the petition is accepted and it is ordered that the petitioner in the event of his arrest shall be released on bail subject to his furnishing personal bonds and surety bonds to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and cooperate with the Arresting/Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.*

9. *It is however clarified that in case the petitioner does not join investigation, it shall be open to the investigating agency/prosecution to move for cancellation of his bail.”*

Learned counsel for the petitioner has also relied upon order of this Court dated 16.07.2021 passed in **CRM-M-12997-2020** titled as “***Daljit Singh Vs. State of Haryana***”. The relevant portion of the said order is reproduced hereinbelow:-

“Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.188 dated 08.04.2020 registered under Sections 15, 18, 27A, 29 of NDPS Act, under Sections 140, 188, 216, 419, 420, 467, 468, 471, 474 IPC and under Section 6 of Official Secret Act at Police Station Pehowa, District Kurukshetra.

Petitioner has been implicated on the basis of disclosure statement of co-accused from whom 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 Kgs khas khas were recovered.

FIR was registered on the basis of secret information, but still name of petitioner did not figure in the ruqa of the police.

Notice of motion was issued on 27.05.2020 alongwith interim directions in favour of the petitioner to join the investigation.

Order dated 27.05.2020 is reproduced here as under:-

“On account of outbreak of covid-19 the instant matter is being taken up through video conferencing.

Instant petition has been filed under Section 438 Cr.PC for grant of anticipatory bail to the petitioner in FIR No.188 dated 8.4.2020 for the offences under Section 15,18,27-A,29 of NDPS Act, 1985 at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner has inter alia contended that the petitioner is innocent and has been falsely implicated in the case only on the basis of disclosure statement of co-accused from whom recovery of 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs.of khas khas was recovered. It has been further contended that the factum of his false implication is further fortified from the fact that the recovery of the aforementioned narcotic contraband was effected on the basis of secret information and his name did not figure either in the ruka sent by the police nor in the FIR in question coupled with the fact that nothing was recovered from him. He is not even involved in any other case of similar nature.

Notice of motion for 10.7.2020.

On the asking of the Court, Mr. Saurabh Mohunta, DAG., Haryana accepts notice.

Meanwhile, petitioner is directed to join the investigation and appear before the investigating agency/Investigating Officer. On his appearance, he shall

be released on interim bail to the satisfaction of arresting/investigating officer. The petitioner shall, join the investigation as and when call for and shall abide by the conditions specified under Section 438(2) Cr.P.C.

27.05.2020 (MANJARI NEHRU KAUL)

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JUDGE

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

The stands of the State is that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in case of presence of police on the way.

Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of co-accused. The material on which the learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned State counsel seeks custody of the petitioner on the aforesaid premise.

*Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of **Tofan Singh vs State of Tamil Nadu, Criminal Appeal No.152 of 2013** wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.*

In view of aforesaid position, it would be just and appropriate to confirm order dated 27.05.2020, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation as and when required to do so by the Investigating Officer and shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.”

Learned counsel for petitioner Aman Sharma further submits that he is not involved in any other case and he is also been in custody for the last 1 year, 6 months and 23 days and thus, deserves the concession of bail.

Learned State counsel has opposed the bail applications of the petitioners. The State counsel has placed on record the custody certificate of both Bikram Singh and Aman Sharma. The same are taken on record. As per the custody certificate, petitioner Bikram Singh has undergone actual custody of 1 year 6 months and 24 days and petitioner Aman Sharma has undergone 1 year 6 months and 23 days. Learned State counsel has pointed out that although Aman Sharma is not involved in any other case, but petitioner Bikram Singh is involved in another case under the NDPS Act. It is submitted that the present case is a case of involving recovery of commercial quantity of heroin and thus the bails should be rejected. However, learned State counsel has not been able to dispute the legal infirmities pointed out by the learned counsel for the petitioners and also other factual aspects pointed out by learned counsel for the petitioners.

Learned counsel for petitioner Bikram Singh, to rebut the arguments raised by learned State counsel with respect to the aforesaid

case, has submitted that in the said case, the petitioner was involved only on the basis of disclosure statement and there was no recovery from the petitioner and the petitioner has already been released on bail in the said case. In the said regard, reliance has been placed on the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”, 2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

Learned counsel for the petitioner has also relied upon judgment of ***Mewa Singh (supra)*** to contend that even in the said case there was a recovery of 1.7 kgs of heroin and petitioner was involved in three other cases, still, the concession of anticipatory bail was granted by a co-ordinate Bench of this Court. Further reliance has been placed upon the judgment of co-ordinate Bench of this Court passed in ***CRM-M-29371-2021*** titled as ***“Gurpreet Singh @ Gopi vs. State of Punjab”*** decided on 06.08.2021. It was also a case of recovery of commercial quantity of heroin where regular bail was granted by this Court.

This Court has heard learned counsel for the parties.

Learned counsel for the petitioners have raised several issues on the merits of the case. The first and primary issued raised is the non-compliance of Section 42 of the Act 1987. The contention of learned counsel for the petitioners to the effect that secret information had not been taken down in writing independently and had not been sent to senior officer in writing is weighty. Reliance sought to be placed upon the judgment of Hon'ble Supreme Court of India in ***Rajender Singh's*** case (supra), which has been reproduced hereinabove, would also show that the said point would be very substantial point during trial so as to plead for acquittal of the petitioners. A perusal of judgment of the Hon'ble Supreme Court in ***Rajender Singh's*** case (supra) would show that although in the said case, a ruqa was recorded after the secret information was received and the said ruqa was sent to the police station for registration of the FIR, it was held that since there was no record prepared with respect to the secret information received by him in writing and thereafter such information was not sent to the higher authorities, thus, the appeal of the accused therein was allowed by taking the ground of non-compliance of Section 42 of the Act 1987 as none of the relevant grounds. Even the arguments of learned counsel for the petitioners to the effect that the perusal of the statement dated 18.02.2020 of Inspector Sukhwinder Singh as appearing at page 219 would also show that in the opening part of the said statement, details with respect to the FIR which was registered on 19.02.2020 have been mentioned and thus the arguments of learned counsel for the petitioners to the effect that the said documents / memos seem to have been fabricated carry weight, more so in light of judgment of Division Bench in ***Didar Singh@ Dara's***

case (supra), the relevant part of which has been reproduced hereinabove. The Division Bench of this Court has observed that a case of such fabrication / insertion seriously reflects on the integrity of prosecution version and the same would be a serious lapse in the prosecution case, thereby creating doubt as to the prosecution theory.

The said facts would show that the petitioners have a strong case on merits but however no final opinion is being expressed with respect to the same as the same would cause prejudice to the case of prosecution during trial.

In the present case, the petitioners Bikram Singh and Aman Sharma were arrested on 18.02.2020 and 22.02.2020 respectively and they have been in custody for the last 1 year, 6 months and 24 days; and 1 year 6 months and 23 days respectively. Challan has already been presented and there are as many as 25 witnesses out of which only one witness has been examined. The trial is likely to take time, more so in view of the pandemic. All the witnesses are stated to be official witnesses and thus, the question of influencing the same shall not arise.

Before parting with this judgment, this Court would also like to make a note of the judgment dated 31.08.2021 of Division Bench of this Court passed in ***CRM-8262-2021 in CRA-S-3721-SB-2015*** titled as ***“Harpal Singh vs. National Investigation Agency and another”*** in which after considering the entire law on the aspect of the suspension of sentence, the Division Bench of this Court by taking into consideration Article 21 of the Constitution of India, with respect to speedy trial, has suspended the sentence in the case of recovery of commercial quantity. In the said judgment, the latest judgments of the Hon'ble Supreme Court have also been

taken into consideration and it has also been observed that grounds for regular bail stand on different footing than for suspension of sentence inasmuch as at the stage of regular bail, the accused has not been even convicted. Reference has also been made to the order of Hon'ble Supreme Court dated 12.10.2020 passed in Criminal Appeal no.668 of 2020 titled as ***“Amit Singh Moni vs. State of Himachal Pradesh”*** in which Hon'ble Supreme Court was pleased to grant regular bail in a case involving 3 kgs.285 grams of charas primarily on the ground of custody and also the fact that the trial is likely to take time. Further even the order of Hon'ble Apex Court dated 16.08.2021 passed in Criminal Appeal no.827 of 2021 titled as ***“Mukarram Hussain vs. State of Rajasthan & Anr.”*** was also a case where bail was granted in a case where the recovery was that of commercial quantity. To the similar effect was the order dated 05.06.2020 passed in petition for Special Leave to Appeal (Crl.) no.6740/2019 titled as ***“Union of India & Anr. vs. Hasibur Rahman”***. The judgment of a co-ordinate Bench of this Court granting bail to an accused who was involved in a case of recovery of 3.8 kgs of charas after being in custody for 1 year and 7 months, was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in petition for Special Leave to Appeal (Crl.) no.5852/2021 titled as ***“Narcotic Control Bureau vs. Vipin Sood & Anr.”***.

Keeping in view the abovesaid facts and circumstances, this Court deems it appropriate to allow both the petitions of the petitioners for regular bail. Accordingly, the aforesaid petitions are allowed and the petitioners are directed to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court / Duty Magistrate, subject to the following conditions:-

1. The petitioners will not hamper with the evidence during the trial.
2. The petitioners will not pressurize / intimidate the prosecution witness.
3. The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioners shall not commit an offence similar to the offence of which they are accused, or for commission of which they are suspected.
5. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail before this Court.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail applications.

A photocopy of this order be placed on the file of other connected case.

(VIKAS BAHL)
JUDGE

September 20, 2021

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No