

CRM-M-9106-2021

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

CRM-M-9106-2021.
Date of Decision:-14.09.2021.

Mangal Singh @ Manga

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Subhash Kumar, Advocate for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

This is the first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.128 dated 25.06.2020 under Sections 15 and 29 of the NDPS Act, 1985, registered at Police Station Bilga, District Jalandhar.

On 26.02.2021, a Co-ordinate Bench of this Court was pleased to pass the following order:-

“The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Counsel for the petitioner submits that it is on the basis of disclosure statement made by the other co-accused, petitioner has been named as an accused and he is being falsely

CRM-M-9106-2021

implicated in the same police station because ASI Mangal Singh is inimical to the petitioner. Said Mangal Singh has taken Rs.4 lakhs from the house of the petitioner.

Notice of motion.

At this stage, Mr. Avtar Singh Sandhu, Additional Advocate General, Punjab, has put in appearance on behalf of State and on instructions from SI Som Nath, he submits that petitioner is involved in two cases under NDPS Act in the State of Punjab, whereas one case i.e. FIR No.483, dated 24.11.2015, Police Station Sadar Nimbahera, Chittorgarh in Rajasthan.

Adjourned to 25.03.2021.

Meanwhile, State to file status report in the case.”

Thereafter, a status report was filed in the present case. On 07.04.2021, the following order was passed by a Co-ordinate Bench of this Court granting interim protection to the petitioner:-

“Learned counsel for the petitioner herein prays for grant of anticipatory bail to the petitioner and submits that he has been falsely implicated in the present said FIR and has been nominated as an accused on the basis of a disclosure statement while arguing that the other FIRs pending against him also no recoveries have been effected from him.

Adjourned to 14.09.2021.

Meanwhile, petitioner is directed to join the investigation within a period of one week and on doing so, the petitioner be released on interim bail to the satisfaction of

CRM-M-9106-2021

Arresting/Investigating Officer. However, the petitioner shall continue to join the investigation as and when called upon to do so and shall abide by the conditions incorporated under Section 438(2) Cr.P.C.”

Learned counsel for the petitioner has submitted that in pursuance of the above said order, the petitioner has already joined the investigation. It is also submitted that in fact no recovery has been made from the petitioner and even the alleged recovery from the co-accused Jagjeet Singh is 52 kgs of poppy husk which is marginally more than 50 kgs, less than which is non-commercial quantity. Learned counsel for the petitioner has further referred to the status report and has submitted that there is no other material against the petitioner even as per the said status report except the disclosure statement.

Learned counsel for the petitioner 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 to the effect that he had supplied the contraband 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.

CRM-M-9106-2021

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.

CRM-M-9106-2021

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:-

CRM-M-9106-2021

“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

CRM-M-9106-2021

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.

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***

CRM-M-9106-2021

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.”

It is further submitted that the petitioner has already joined the investigation.

Learned State counsel has submitted that although the petitioner has joined the investigation but he is involved in two other cases. In rebuttal to the same, learned counsel for the petitioner has submitted that in FIR No.68 even as per the status report, the petitioner has already been granted anticipatory bail. Even with respect to the second case which is in Rajasthan, the petitioner is already on bail.

Keeping in view above-said facts and circumstances moreso, the fact that no recovery has been effected from the petitioner and the petitioner is sought to be involved only on the basis of disclosure statement and as per the status report, the petitioner has been granted anticipatory bail in FIR No.68 and in the other case the petitioner is already on bail and also

CRM-M-9106-2021

in view of the judgments cited by learned counsel for the petitioner, this Court allows the present petition and the order dated 07.04.2021 is made absolute.

However, nothing stated above shall be construed as an 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 application.

(VIKAS BAHL)
JUDGE

September 14, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No