

(202) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11065-2021

Date of Decision:19.08.2021

Manjeet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present : Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. Saurav Khurana, D.A.G. Punjab.

VIKAS BAHL, J. (Oral)

Case is taken up for hearing through video conferencing.

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.0012 dated 17.01.2021, registered under Sections 21 (b)/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Special Task Force Wing, Mohali, District S.A.S. Nagar.

On 09.03.2021, when this case came up before a co-ordinate Bench of this Court, following order was passed:

“Heard through video conferencing

The petitioner is seeking anticipatory bail in FIR No.0012 dated 17.01.2021, under Sections 21 (b)/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Special Task Force Wing, Mohali, District S.A.S. Nagar.

Learned counsel for the petitioner contends that the recovery of 100 grams of heroin has been allegedly effected from co-accused, namely Ravi Kumar, who was arrested at the spot. It is alleged that the petitioner had run away after the vehicle was apprehended. He, however, contends that the prosecution version is highly improbable and it would not be possible for the petitioner to have run away from the spot in the presence of 5-6 police officials and there is no video recording to indicate that the petitioner had run away.

Issue notice the respondent.

At the asking of the Court, Mr. Dhruv Dayal, Senior DAG, Punjab, accepts notice on behalf of the respondent-State. He prays for time to file an affidavit with regard to the role and the prima facie material against the petitioner.

List on 01.04.2021.

The arrest of the petitioner shall remain stayed till the next date of hearing.”

Learned counsel for the petitioner has submitted that there is no recovery from the petitioner and even the alleged recovery from the co-accused was 100 grams of 'Heroin' which is a non commercial quantity. It is further submitted that it is highly improbable that he would have run away from the spot where 5-6 police officials were present. It is further submitted that in case the anticipatory bail is granted to the petitioner, petitioner would join the investigation and would co-operate with the investigation. It has also been submitted that with respect to the recovery, there was no independent witness.

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 v. 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.

2. *Reply way of affidavit of Mr. Piara Singh PPS, Deputy Superintendent of Police, Sub-Divbision 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 as 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 5.12.2020 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 disclosre 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 case.*

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 Office and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

9. *It is however clarified hat 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 v. State of Haryana”**. The relevant portion of the said ordere 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 Kg500 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 khaswas recovered. It has been further contended that the factum of his false implication is further fortified from the fact tht 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 10.07.2020.

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
archana

(MANJARI NEHRU KAUL)
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 relied 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 v. 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 the 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 the petitioner has relied upon the two abovesaid judgments to contend that in such like cases if a person has only been proceeded against on the basis of disclosure statement of co-accused and no recovery has been effected from the petitioner, then he should be granted the benefit of anticipatory bail.

Learned State counsel has submitted that the petitioner has been convicted in another FIR No.53 dated 28.5.2014 vide judgment dated 18.11.2015 under Section 21, 61, 85 of NDPS Act. He, however, has stated that there is no other case against the petitioner and could not dispute that no recovery was effected from the petitioner and even the recovery so effected from the co-accused is a non-commercial quantity.

Learned counsel for the petitioner in response to the assertion of the State that petitioner is convicted in another case, as aforesaid, has submitted that the said incident is very old i.e. of the year 2014 and in the said case also recovery so effected was non-commercial quantity and the sentence awarded to the petitioner was already undergone which was approximately one month and only a fine of Rs.3000/- was imposed. It

is further submitted that for the last so many years, there is no other case registered against the petitioner under the NDPS Act.

In view of the above facts and circumstances of the case, without expressing any opinion the merits of the case, interim order dated 09.03.2021 is ordered to be made absolute.

Accordingly, the present petition is allowed.

(VIKAS BAHL)
JUDGE

19.08.2021
rajeev

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No