

CRM-M No.18706 of 2021
Date of Decision : 19.07.2021

Sony Singh @ Soni Kana @ Somy ...Petitioner

Versus

State of PunjabRespondent

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. P.S. Sekhon, Advocate for the petitioner.
Mr. Sukhbeer Singh, AAG, Punjab.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 439 Cr.P.C. is for grant of regular bail to the petitioner during pendency of the trial in case FIR No.68 dated 30.10.2019 registered under Sections 21, 22, 25 and 29 NDPS Act, 1985 at Police Station Thuliliwal, District Barnala, Punjab.
3. Learned counsel contends that FIR was registered against co-accused, Sukhwinder Singh, Lakhwinder Singh, Ravi Singh and Jinder Singh, on the basis of secret information received by Inspector Baljeet Singh on 30.10.2019 of transportation of contraband upon which said co-accused were apprehended while travelling in Ertiga Car (PB-11-CC-0285) and 1,65,000 intoxicant tablets of CLOVIDOL-100 SR (contained in strips) besides 1,44,000 alprasaft tablets containing alprazolam salt, total 3,09,000 tablets were recovered from Sukhwinder Singh and

Lakhwinder Singh by SI Kuldeep Singh in the presence of Assistant Superintendent, Police, Ms. Pragya Jain.

4. Learned counsel contends that the petitioner was not arrested at the spot, no recovery was effected from him, besides, he was not involved in any other case under the NDPS Act and that he had been implicated in the instant case solely on the basis of disclosure statement of aforesaid co-accused of the petitioner having given an advance to them for purchase of aforesaid intoxicating tablets besides disclosure / confessional statement made by the petitioner while in police custody of being involved in sale of contraband and that apart from the aforementioned disclosure statements, there was no material to connect the petitioner with the commission of the offence.

5. Pursuant to order dated 09.07.2021, State has filed reply in Court. The same is taken on record. Learned State Counsel has referred to page No.10 of the reply containing role of the petitioner. Relevant extract of the reply is reproduced as under:-

“ROLE OF THE PETITIONER”

Accused Lakhwinder Singh and Sukhwinder Singh disclosed that both of them in connivance with Ravi Singh and Narinder Singh @ Jinder Singh, used to bring intoxicant tablets and intoxicant vials from the other States i.e. U.P. or Delhi in the Ertiga car of Lakhwinder Singh and to sell the same further in the area of Barnala, Sangrur, Mansa and Patiala. They have brought the intoxicant tablets from Delhi. It was further disclosed that all of them used to bring and sell the intoxicant tablets together with Pankaj Kumar @ Bishnu, Raju Singh @ Ramesh Bihari residents of Delhi and Rinku S/o Gulzar Singh r/o

Handiaya, Sony Singh @ Sony @ Somy S/o Pala Singh r/o Indira basti, Sunam. On the basis of disclosure of Lakhwinder Singh, Amrik Singh, Pankaj Kumar @ Bishnu, Raju Singh @ Ramesh Bihari and Rinku and Sony Singh @ Sony @ Somy were nominated as accused u/s 29 NDPS Act on 07.11.2019. Sony Singh@ Sony @ Somy (petitioner) was arrested on 18.12.2020 and during interrogation, he disclosed that for the last ¾ years, he used to sell the liquor in the area of Sunam by bringing from outer States and many cases were registered against him. His younger brother Vicky was acquainted with Golu r/o Sunam, who used to sell liquor as well as intoxicant tablets. Golu Singh used to bring intoxicant tablets from Sukhwinder Singh. Golu Singh used to bring intoxicant tablets from Sukhwinder Singh. Due to which, he was got acquainted with Sukhwinder Singh @ Sukha through Golu, who used to give him boxes of intoxicant tablets and he further used to sell the same in retail and in this way, he earned sufficient profit and from this income, he runs the livelihood of his family.

In view of the facts stated above, the petitioner is involved in drug trafficking so, the act and conduct on the part of petitioner does not make him entitled for the grant of regular bail.”

6. Learned State Counsel on instructions from *SI Satpal Singh*, as well as on the basis of the reply contends that the above mentioned disclosures, although are the only material available, yet are enough to implicate the petitioner in the commission of the offence due to the heavy recovery.

7. Learned counsel for the petitioner on the other hand contends that implication of the petitioner in the commission of the

offence solely on the basis of disclosure statement of co-accused, Lakhwinder Singh and Sukhwinder Singh besides the petitioners alleged confession / disclosure while in police custody is legally unsustainable in view of the decision of Hon'ble the Supreme Court in '**Tofan Singh versus State of Tamil Nadu**', 2021(1) RCR (Crl.) 1 and **Hari Charan Kurmi Vs. State of Bihar, 1964 AIR (SC) 1184**. Learned counsel further contends that investigation in the case is complete, challan has been presented, though charges are yet to be framed, therefore, no useful purpose would be served by keeping the petitioner behind bars as trial would take considerable time to conclude.

8. I have heard learned counsel and considered their submissions. Admittedly, the petitioner has been arrayed as accused in the instant case on the basis of disclosure statement made by co-accused Lakhwinder Singh and Sukhwinder Singh from whom on their arrest on the basis of secret information total 3,09,000 intoxicants tablets i.e. (1,65,000 intoxicant tablets of CLOVIDOL-100 SR (contained in strips) and 1,44,000 alprasafe tablets containing alprazolam salt, were recovered by SI Kuldeep Singh in the presence of Assistant Superintendent of Police, Ms. Pragya Jain besides disclosure / confession by the petitioner while in police custody admitting dealing in contraband.

9. Hon'ble the Supreme Court in '**Tofan Singh versus State of Tamil Nadu**', 2021(1) RCR (Crl.) 1, has held that a confessional statement made to a police officer *cannot be taken into account to convict an accused under the NDPS Act in view of Section 25, Evidence Act* whereas in **Hari Charan Kurmi Vs. State of Bihar, 1964 AIR (SC) 1184** it was held that mere *confession of co accused is not enough to implicate an accused except*

where there is other satisfactory evidence to sustain the charge against said accused person, in which eventuality, the confession can be used by the court to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

Relevant extract of the aforementioned decision's reproduced as under:-

Tofan Singh's case (Supra)

"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."*

Hari Charan Kurmi's case (Supra):-

".....Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30....."

Tofan Singh's decision was followed by a Co-ordinate Bench of this Court in 'Rakesh Kumar Singla versus Union of India' in CRM-M No.23220 of 2020, decided on 14.01.2021. Apart from the disclosure statement of co accused as well as disclosure statement / confession by petitioner there is no material to connect the petitioner with the commission of the offence. Although, recovery in the case is of a huge quantity i.e. much more than the commercial quantity, yet the bar under Section 37 would not be attracted in view of the petitioner not having been arrested from the site, there being no recovery from him, besides in view of the only material relied upon by the State being of disclosure statement of co accused and confession / disclosure by petitioner while in police custody, it can reasonably be assumed that the petitioner is not involved in the commission of the offence besides on account of his not being involved in any other case under the NDPS Act, 1985 it can be reasonably assumed that he is not likely to commit any offence under the NDPS Act, 1985 while on bail. Moreover, investigation is complete, challan has been presented and the petitioner is behind bars since 18.12.2020, though charges are yet to be framed, consequentially, trial of the case is likely to take time. Accordingly, I am of the view that no useful purpose would be served by keeping the petitioner behind bars. Resultantly, the petition for regular bail is **allowed** and the petitioner is ordered to be released on regular bail during the pendency of the trial, subject to his furnishing bail / surety bonds to the satisfaction of the learned CJM / Trial Court / Duty Magistrate, concerned, provided he is not required in any other case. The petitioner shall also abide by the conditions contained in Section 437(3) Cr.P.C. However, nothing stated

hereinabove shall be construed as an expression of opinion on the merits of the case.

10. Needless to mention, in case the petitioner is involved in any other case under the NDPS, Act, 1985 while on regular bail in the instant case, the prosecution would be at liberty to move an application for cancellation of bail granted to the petitioner in the instant case.

11. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

19.07.2021
'Rajneesh/Amit'

<i>Whether speaking/ reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>