

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

(203)

CRM-M-23998-2021.
Date of Decision:-27.10.2021.

Harbhajan Singh

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. G.P.S. Bal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

Mr. Munish Behl, Advocate for
Mr. Deepak Sharma, Advocate for the complainant.

VIKAS BAHL, J. (Oral)

This is a first petition under Section 438 Cr.P.C. for grant of ad-interim anticipatory bail to the petitioner in case FIR No.0144, dated 09.04.2021 under Sections 382 and 120-B of IPC, registered at Police Station Baldev Nagar, District Ambala.

On 24.06.2021, a Co-ordinate Bench of this Court was pleased to pass the following order:-

“The matter has been taken up through Video-conferencing on account of outbreak of pandemic COVID-19.

Counsel for the petitioner inter-alia contends that the petitioner is an Executive in a leading company at Zirakpur while his wife works for a foreign company and that on account

of third party dispute, they have been falsely implicated and nothing is to be recovered and the alleged occurrence is detailed in district Ambala and mere perusal of the FIR denotes falsehood of the story.

Notice of motion for 13.8.2021.

Meanwhile, in the event of arrest, the petitioner shall be released on interim bail to the satisfaction of arresting/investigating officer. The petitioner shall, however, join the investigation within a period of 15 days and shall also abide by the conditions specified under section 438 (2) Cr.P.C.”

Learned counsel for the petitioner has argued that in the present case, the petitioner has been falsely implicated, as the petitioner was not apprehended on the spot and even the Alto car bearing No.HR-21-M-7791, which was used in the commission of offence, belongs to the co-accused Naveen Kumar. It is submitted that the prosecution version is to the effect that the complainant, who was a scrap dealer was called by three persons over a distance of about 20 kms and then an amount of Rs.43,000/-, one ATM card, driving licence, Aadhar card and mobile phone having been snatched from him is highly doubtful, as a person who would want to commit such an offence would not call a scrap dealer to a distance of 20 kms. to commit the said theft/snatching. It is argued that even as per the prosecution version, the mobile phone and an amount of Rs.8,000/- had been recovered from the accused Aman Kumar and Rs.2,000 was stated to have been recovered from one Naveen Kumar. It is submitted that the petitioner is not involved in any other case and reference has been made to

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paragraph 3 and 4 of the bail application filed in the Court of Sessions Judge, Ambala to state that the petitioner and his wife are placed well in life and the question of committing the alleged offence, does not arise. The said paragraphs are reproduced hereinbelow:-

“3. That the accused is a well to do respectable having attain the qualification of MCA from the leading university in the country and have scored marks to the tune of 72% and the applicant has established his business at two different places and is/was doing extremely well, however, in the due course the accused also gained an employment (was appointed due to his academic record and qualification) by concert Jeena Sikho Lifecare Pvt. Ltd. as Customer Care Executive with a monthly salary of Rs.14,515/-.

4. That wife of the applicant is very well qualified as MSc Bio Chemistry (Hons.) from Panjab University, Chandigarh, and as per her academic record and qualification Concert Jeena Sikho Lifecare Pvt. Ltd. Has appointed her as Chat Executive with a monthly salary of Rs.15,000/- she is also working with USA based company Colossus Ventures India as part time work associate from home as a content writer and obtain Rs.20,000/- salary per month.”

It is further submitted that initially one Rahul was the third accused but the petitioner has now been implicated on the basis of the alleged disclosure statement made by the co-accused and also on the basis of the mobile location of the petitioner. It is argued that merely on the basis of disclosure statement, the petitioner could not be implicated in the case.

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Learned counsel for the petitioner has relied upon the judgment passed in **CRM-M-12051-2020**, by a Co-ordinate Bench of this Court dated 17.06.2020 titled as “**Mewa Singh Vs. State of Punjab**” and the judgment passed in **CRM-M-12997-2020 titled as “Daljit Singh Vs. State of Haryana**”, to contend that merely on the basis of the disclosure statement of the co-accused the petitioner should not be denied the concession of bail. The relevant portion of **Mewa Singh's** judgment 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 was filed by 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.”*

The relevant portion of ***Daljit Singh's*** (*supra*) judgment 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)**
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 coaccused. 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.”

Even with respect to the mobile location, learned counsel for

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the petitioner has submitted that a perusal of the reply dated 01.06.2021 (Annexure P-4), moreso, paragraph 9 and 17 which has been filed by the CIA Staff, Ambala City, would in fact show that the petitioner was asked by the co-accused to come to the place of the alleged incident. It is submitted that to show his *bona fide*, the petitioner is ready to pay an amount of Rs.33,000/- to the complainant without prejudicing his rights to claim innocence in the present case. It is also submitted that even as per the case of the prosecution, the ATM card has not been used and in case the intent was to steal the ATM card, then surely, the petitioner would have used the same. The driving licence and the Aadhar card are of no use to the petitioner and, thus, in case the same were in his possession, the same would have been handed over to the police.

Learned State counsel as well counsel for the complainant, have opposed the bail application pointing out that the other co-accused have conspired together and the petitioner should not be granted the benefit of anticipatory bail. It is further submitted that although some amount and the mobile phone have been recovered but the ATM card, driving licence, Aadhar card and the balance amount of Rs.33,000/- are yet to be recovered from the petitioner. It is further submitted that the petitioner had come to join the investigation and he was identified by the complainant to be the person involved in the incident. It has been argued that the tower location of the mobile phone of the petitioner also indicated that he was present on the spot of the incident.

This Court has heard the learned counsel for the parties.

The petitioner is a duly qualified professional and worked as an Executive in a Company at Zirakpur and has done Masters in Computer

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Applications and even the wife of the petitioner is well qualified and she is stated to have done M.Sc. Bio Chemistry (Hons.) from Panjab University, Chandigarh and has been appointed as a Chat Executive with a monthly salary of Rs.15,000/- and is also working with a U.S. based company as a part-time work associate from home at the post of a content writer and is stated to draw a salary of Rs.20,000/- per month, in lieu of the same. The petitioner is not involved in any other case. The recovery of the mobile phone of the complainant as well as the amount of Rs.10,000/- has already been effected from the co-accused. The fact that as to whether the case set up by the complainant to the effect that he was a scrap dealer and was called on his mobile phone and was made to travel for 20 kms before the theft was committed, in which the petitioner who has no criminal antecedents, was involved or not is a matter of trial. Even with respect to the mobile location of the petitioner, the reply dated 01.06.2021 (Annexure P-4) filed by the CIA Staff is self-contradictory and not very clear and moreover, at one stage, the reference has been made to the call details and on the other arguments have been made with respect to the tower location. The petitioner in order to show his *bona fide* is ready to pay the amount of Rs.33,000/- to the complainant, without prejudice to his rights.

Keeping in view the above-said facts and circumstances, the present petition for anticipatory bail is allowed and the interim order dated 24.06.2021 is made absolute.

The petitioner, as has been submitted, would furnish a draft of Rs.33,000/- in the name of the complainant within a period of one week from the date of receipt of certified copy of this order, to the learned counsel for the complainant and the learned counsel for the complainant

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will hand over the same to the complainant. The complainant would be at liberty to encash the same.

The said payment is without prejudice to the right of the petitioner in the trial to claim innocence. It is, however, made clear that in case, the said demand draft is not given within the stipulated period, then the present petition shall be deemed to have been dismissed.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial 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

October 27, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No