

CRM-M-24358-2021

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

CRM-M-24358-2021.
Date of Decision:-14.09.2021.

Pawan

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vikas Bishnoi, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

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.267 dated 14.06.2021 under Section 21 (b) of the NDPS Act, 1985 and Section 51 (b) of Disaster Management Act, 2005 but during investigation Section 27-A of NDPS Act, 1985 has been added, registered at Police Station City Fatehabad, District Fatehabad.

On 30.06.2021, a Coordinate Bench of this Court was pleased to pass the following order:-

*“The case has been taken up for hearing through
video conferencing.*

*Prayer in the present petition filed under Section 438
of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.')*

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is for grant of anticipatory bail to the petitioner in case FIR No.267 dated 14.06.2021 registered under Sections 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and Section 51(b) of the Disaster Management Act, 2005 at Police Station City Fatehabad, District Fatehabad to which Section 27-A of the NDPS Act was added lateron.

Learned Counsel for the petitioners has submitted that the petitioner was not named in the FIR and has been falsely implicated in the case on the basis of disclosure statement of co-accused Rahul and Naveen. The petitioner was not present on the spot and no recovery was effected from him. The petitioner is not involved in any other case under the NDPS Act. Rigors of Section 37 of the NDPS Act are not applicable qua the petitioner. The petitioner is ready to join the investigation.

Notice of motion.

Pursuant to supply of advance copy, Mr. Ranvir Singh Arya, Addl. A.G., Haryana has appeared and accepted notice on behalf of the respondent-State.

Learned State Counsel seeks time to file reply.

Adjourned to 14.09.2021.

In the meanwhile, the petitioner is directed to join the investigation as and when called upon to do so. In the event of his arrest, the petitioner shall be released on interim anticipatory bail by the arresting officer/investigating officer on furnishing of bail bonds by him to the satisfaction of the arresting officer/investigating officer. The petitioner shall comply with the

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conditions enumerated under Section 438(2) of the Cr.P.C. failing which he shall not be entitled to the protection of interim anticipatory bail allowed to him.”

Learned counsel for the petitioner has submitted that in pursuance of the above order, the petitioner has joined the investigation and even the alleged recovery from the co-accused Vikram was of non-commercial quantity and in fact the said Vikram had taken the name of the Rahul and Naveen and not the petitioner. It is only subsequently, that Rahul and Naveen named the petitioner. It is also submitted that the petitioner is not involved in any other case.

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.

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.

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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,

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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

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*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.*

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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 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*

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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 State counsel, on the other hand, has opposed the bail application but however submits that the petitioner has joined the investigation and is not required for further investigation and could not dispute the factual averments made by the learned counsel for the petitioner.

Keeping in view the above facts and circumstances moreso, the fact that no recovery has been effected from the petitioner and it was Vikram @ Bikar from whom the alleged recovery of non-commercial quantity has been made and the petitioner was only named in the disclosure statement of Rahul and Naveen who had been implicated by the said Vikram @ Bikar and since the petitioner is not involved in any other case and has already joined the investigation and is not required for further investigation, thus, the order dated 30.06.2021 is made absolute.

The present petition is accordingly allowed.

However, nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial Court would

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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:-
Whether Reportable:-

Yes/No
Yes/No