

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

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CRM-M-25695-2021

Date of Decision : September 29, 2021

SANJAY @ CHOTA BAGRI

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

2

CRM-M-32436-2021

Sukhwinder @ Sukha

.....Petitioner

VERSUS

State of Haryana

.....Respondent

3

CRM-M-33132-2021

Sonu

.....Petitioner

VERSUS

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Amit Chaudhary, Advocate
for the petitioner in CRM-M-25695-2021

Mr. Gourav Jain, Advocate
for the petitioner in CRM-M-32436-2021.

Mr. P.S. Sekhon, Advocate
for the petitioner in CRM-M-33132-2021.

Mr. Ranvir Singh Arya, Addl. AG, Haryana.

Through Video Conferencing**JASGURPREET SINGH PURI. J. (Oral)**

All these three petitions shall be taken up together since all the three petitions arise from the same FIR i.e. FIR No.88 dated 20.02.2021 under Sections 20, 29, 61 and 85 of NDPS Act, 1985 Police Station Narnaund Police District Hansi.

The petitioner namely Sanjay @ Chota Bagri in CRM-M-25695 of 2021 is stated to be in custody since 27.02.2021, the petitioner namely Sukhwinder @ Sukha in CRM-M-32436-2021 is stated to be in custody since 28.05.2021 and the third petitioner namely Sonu in CRM-M-33132-2021 is stated to be in custody since 24.06.2021.

All the learned counsels of the petitioners have submitted that the names of the petitioners have been nominated on the basis of different disclosure statements and there is nothing with the prosecution to connect the petitioners with the alleged offence apart from the disclosure statements. They further submitted that the investigation of the case is already complete and the challan has already been presented and all of them have been falsely implicated by the police and even after the arrest of the petitioners, no recovery has been effected from them. The learned counsels have further submitted that in the present case, the FIR was registered in which they were not named but on a secret information the police had conducted a raid at fields from where there was a recovery of 325 Kgs of Ganja apart from another recovery of 393 Kgs, which was also recovered from the agricultural fields.

The learned counsel for petitioner Sanjay @ Chota Bagri has

submitted that so far as the present petitioner is concerned, his name has been cropped up on the basis of second disclosure statement made by one Ramesh but apart from the said disclosure statement, there is no other material available with the prosecution to connect the present petitioner with the present offence. He has submitted that the present petitioner was involved in another case under the NDPS Act, in which he has been granted anticipatory bail by this Court in CRM-M-41 of 2021 which was decided on 25.02.2021 vide Annexure P-3 and when the petitioner had gone to the police station for joining of investigation, the police had demanded some money from him but since he did not accede to the same, the present petitioner was nominated in the present FIR although the police station was different but the district was the same and it was only because of the aforesaid FIR that the petitioner has been falsely implicated on the basis of a second disclosure statement of one Ramesh. He has further submitted that in the disclosure statement it has come up that the petitioner was involved in another case in Orrisa but the details of the same have not come up on the record.

In the case of Sukhwinder @ Sukha, the learned counsel for the petitioner has submitted that although the petitioner was involved in one other case under NDPS Act but in that case also, the petitioner was falsely implicated and the petitioner is under-trial in the aforementioned case and he has further submitted that since it was only because of the pendency of the aforesaid case that the name of the petitioner has been nominated in the present FIR and that also on the basis of a disclosure statement of Sunil @ Sonu and the aforesaid Sunil @ Sonu is already on

bail vide order dated 26.05.2021. He submitted that the person, from whose disclosure statement the petitioner has been nominated, has already been enlarged on bail, therefore, he may be considered for the grant of regular bail.

The learned counsel appearing on behalf of the third petitioner namely Sonu has submitted that the petitioner is not involved in any other case and it was only on the basis of a third disclosure statement recorded on 05.04.2021 that the name of the petitioner has been nominated. He submitted that the petitioner was never involved in the present case and has clear antecedents and is not involved in any other case and, therefore, he may be considered for the grant of regular bail.

All the learned counsels for the petitioners have further submitted that all the petitioners have been nominated on the basis of disclosure statements and be it a second disclosure statement or a third disclosure statement, any kind of disclosure statement made by co-accused is inadmissible in evidence. They have further relied upon the judgment of the Hon'ble Supreme Court in *Tofan Singh Vs. State of Tamil Nadu, 2021 (1) RCR (Crl.) 1.* They have also submitted that there is no other evidence or material available with the prosecution to connect the petitioners with the present offence. There is neither any telephonic conversation nor any other kind of connectivity of the petitioners with the main accused namely Ramesh or any other co-accused and, therefore, the petitioners are entitled for the grant of regular bail.

The learned counsels have further submitted that the similarly situated co-accused who was also nominated in the present FIR

on the basis of disclosure statement namely Sanjay @ Bablu has been granted regular bail by this Court in CRM-M-23130 of 2021 vide Annexure P-5 by passing a detailed order and all the petitioners herein are also similarly situated and are at parity with the aforesaid Sanjay @ Bablu and, therefore, they may be considered for the grant of regular bail.

On the other hand, Mr. Arya, learned Addl. AG, Hayana has submitted that status report has been filed by way of an affidavit of DSP, Narnaund Police District Hansi, Hisar and while referring to the aforesaid affidavit, the learned Addl. Advocate General has submitted that the present FIR was registered on the basis of an information received by the police that some packets of brown colour wrapped with plastic tape were lying in the Kotha in the fields of village Lohari Ragho and, thereafter, these packets were recovered, which weighed 325 kgs and 800 grams and thereafter, it was found that the said packets were containing Ganja Patti and even an FSL report has also been received in this regard. He submitted that thereafter, the co-accused Ramesh was arrested on 22.02.2021 and on his disclosure statement one of the petitioners, namely, Sanjay @ Chota Bagri was nominated. The aforesaid Ramesh made further disclosure statement and in the course of events the other two petitioners were also nominated. It has been specifically stated in the affidavit that no recovery has been effected from petitioner Sanjay @ Chota Bagri in pursuance of his disclosure statement. Furthermore, even no recovery was effected from the remaining two petitioners as well. He has further submitted that the challan has already been presented in the present case after the completion of the investigation and supplementary

challan was also presented qua one of the petitioners, namely, Sukhwinder @ Sukha. The learned State counsel has not disputed the custody period of the petitioners. He has further submitted that two other co-accused are yet to be arrested. The learned State counsel has opposed the grant of regular bail to the petitioners on the ground that since the alleged recovery was of a commercial quantity, the same is hit by the bar contained under Section 37 of the NDPS Act.

I have heard learned counsels for the parties.

The names of all the three petitioners in different petitions have been nominated in the same FIR on the basis of disclosure statements made at different point of time either in the form of a first disclosure statement or a second disclosure statement or a third disclosure statement of the co-accused. The custody period of the petitioners has not been disputed by the learned State counsel and it has also not been disputed by him that the investigation of the case is complete and the challan has already been presented before the competent Court qua the petitioners and no recovery is to be effected from them. It is also not disputed by the learned State counsel that during the investigation of the case no recovery has been effected from any of the petitioners. Since the quantity of contraband involved in the present case is of a commercial quantity, this Court deems it necessary to consider the effect of bar contained under Section 37 of the NDPS Act.

In the present case, admittedly the names of the petitioners have been nominated on the basis of different disclosure statements made by the co-accused which are *per se* not admissible in evidence. On being

specifically asked from the learned State counsel as to whether the petitioners were connected with the offence or whether there is any other link evidence connecting the petitioners with the present offence, the learned State counsel has not been able to answer the same and has shown his inability to refer to any such link evidence. The learned State counsel has stated that an affidavit has been filed by the State, which also does not refer to any other link evidence or material available with the prosecution to link all the petitioners apart from the disclosure statements. It has been further stated by all the learned counsels for the petitioners that even in the challan/report under Section 173 of Cr.P.C., which has been presented before the competent Court, no material is available on record to show as to how the petitioners are connected with the present offence apart from the disclosure statements. The involvement of the petitioners in one or other cases cannot become an impediment for the grant of bail to the petitioners as the petitioners are still under-trial in those cases. The involvement of the petitioners purely on the basis of disclosure statement of co-accused, which is not admissible in evidence would, therefore, make out a prima facie case to believe at this stage that all the three petitioners are not guilty of the present offence. So far as the second condition contained under the provisions of Section 37 of the NDPS Act as to whether there is any likelihood that the petitioners may repeat the offence is concerned, nothing has come on record or from the submissions of the learned State counsel to show that there is any likelihood that the petitioners are likely to repeat the offence. Furthermore, it is not the case of the State nor it has been stated in the

affidavit filed by the State that in case the petitioners are released on bail then they may tamper with evidence or influence any witness or flee from justice. Therefore, at this stage, a departure can be made from the bar contained under Section 37 of the NDPS Act. Furthermore, the other similarly situated co-accused, namely, Sanjay @ Bablu has already been granted bail by this Court vide order dated 30.06.2021.

In view of the above and considering the totality of the facts and circumstances of the present case, the present petitions are allowed. The petitioners are ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petitions only.

It is made clear that in case after the passing of this order, the petitioners are involved in any other case then the State shall be at liberty to move an appropriate application in this regard before the competent Court for cancellation of the bail.

(JASGURPREET SINGH PURI)
JUDGE

September 29, 2021
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No