

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

CRM-M-32813-2021

Date of decision :18.08.2021

Subhash

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Kuldeep Singh Siwach, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a first petition filed by the petitioner under Section 439 Cr.P.C. for grant of regular bail in FIR No.66 dated 15.03.2021 under Sections 15 and 27-A (Act No.61) of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Uklana, District Hisar.

Learned counsel for the petitioner has submitted that in the present case co-accused Jaspreet Singh and Jagsir Singh were apprehended with *Doda Post* (Poppy Husk) weighing 2.30 Kilograms and no recovery was made from the petitioner. It is further submitted that it is only on the alleged disclosure statement of the co-accused that the petitioner has also been made as an accused. It is stated that the petitioner has also been in custody since 06.04.2021 and the challan has already been presented in the Court and there

are as many as 16 witnesses in the list of the prosecution witnesses and thus, the conclusion of trial is likely to take time.

Learned counsel for the petitioner has relied upon an order passed by Coordinate Bench of this Court dated 17.06.2020 titled as ***“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.

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.”*

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 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
archana

(MANJARI NEHRU KAUL)
JUDGE

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

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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 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 counsel for the petitioner has also relied upon order of this Court dated 19.03.2021 passed in CRM-M-41381-2020 titled “Jagsir @Jassi Versus State of Haryana” and CRM-M-3056-2021 titled “Monu Versus State of Haryana” dated 10.02.2021 to contend that where a person has been involved only on account of disclosure statement of the co-accused then the said persons have been granted the concession of anticipatory bails/regular bail by this Court.

Learned State counsel has pointed out that the petitioner is involved in another case, but however, has not disputed the fact that he has already been released on bail in the said case. It has also not been disputed that the recovery from the co-accused is not of commercial quantity and that the charges have not been framed and there are 16 witnesses in the present case and since most of the witnesses are official witness and there is no chance of petitioner's influencing the witnesses.

Learned counsel for the petitioner has relied upon judgment of the Hon'ble Supreme Court reported as 2012(1) SCC (Criminal) 681 titled

“Maulana Mohd. Amir Rashadi Versus State of U.P. and another” as well as Rajasthan High Court reported as 2017(3) RLW 2577 titled as ***“Khartharam Versus State of Rajasthan”*** to contend that mere involvement in another case cannot be the basis to deny bail when in the case in question, the Court considers that the accused is entitled to bail.

Keeping in view, the above said facts and circumstances, considering moreso, that no recovery was made from the petitioner, the petitioner has only been involved on the basis of the disclosure statement of the co-accused and the recovery even from the co-accused is not of a commercial quantity and the petitioner is inside since 06.04.2021 and there are 16 witnesses in the case and even the charges have not been framed in the case and thus, the trial is likely to take time to conclude, this Court deems it appropriate to grant regular bail to the petitioner.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the Illaqa Magistrate/Duty Magistrate/CJM concerned.

(VIKAS BAHL)
JUDGE

18.08.2021
JITESH (JTS)

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No