

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-38389-2021

Date of decision : 10.11.2021

Afsar Khan

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Pratham Sethi, Advocate
for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.0757 dated 09.11.2020 registered under Sections 302, 201, 34, 452, 120-B IPC at Police Station Sonipat City, District Sonipat.

In brief, the case of the prosecution is that one FIR no.301 dated 24.09.2020 (Annexure P-3) was registered at Police Station Singhawali Ahir, District Bagpat, on the complaint made by Ramphal to the effect that on 24.09.2020, Jitender Singh, the son of the complainant, had gone in his Siaz car from his residence to some place in Sonipat itself for some urgent work and did not return home till evening and his phone was switched off and subsequently, the complainant learnt that the car of the deceased Jitender Singh was found parked in Singhawali Ahir area near village Dhaula at Meerut Road and in the boot space of the car, his dead body was lying. On the basis of same, the said FIR was registered in Uttar

Jitender Singh, i.e. Pooja was arrested and on the basis of her disclosure statement, it was found that the offence had been committed in Sonipat and accordingly, the present FIR no.757 dated 09.11.2020 was registered at Police Station City Sonipat, District Sonipat. A perusal of said FIR would show that it has been stated therein that from the preliminary investigation, it had been found that the wife of the deceased Jitender Singh, namely Pooja and her friend Ramesh son of Chander, had committed the offence of murder. It is further the case of the prosecution that on 24.11.2020, a disclosure statement was made by said Pooja to the Sonipat Police and as per the said disclosure statement, it had been stated that she had illicit relations with Ramesh and had planned to eliminate her husband Jitender Singh in collusion with the said Ramesh and had further stated that on 23.09.2020 at night, she had mixed six sleeping pills in the food of her husband, as a result of which, he had gone into deep sleep and the CCTV cameras installed in the house were then switched off by her at around 11.00 hours and then on the same night she had called Ramesh on his mobile and had kept the main gate opened so as to execute the plan of committing the murder of her husband. Then the said Ramesh, along with other accomplices came to the house of the deceased and said Ramesh had brought four Lignocaine and Adrenaline injections and syringe for administering them to the deceased and then said Pooja gave a hammer to Ramesh and then, upon the deceased becoming etherized, she sat on the thighs of Jitender Singh and inflicted many injuries upon him in collusion with Ramesh, who gave blows to the deceased on his head with the hammer and the other accomplices inflicted injuries upon his chest, arm, head, left eye, left ear and left hand with iron rods. Thereafter, the said Ramesh was arrested and in his

disclosure statement, he named two persons being his accomplices namely the petitioner and one Dilshad. The challan has been presented and there are 28 witnesses in the present case.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has not been named in the first FIR and in fact the first FIR had been registered at Uttar Pradesh. Even in the second FIR registered at Sonipat, the petitioner was not stated to be an accused and in fact it was Pooja and Ramesh, who on account of their illicit relationship, were stated to be the accused in the case. It is also submitted that even in the disclosure statement of Pooja, the petitioner has not been named and perusal of the said statement would show that almost the entire alleged act had been committed by the said Ramesh and Pooja and in fact, the sleeping pills were given to the said Jitender Singh by Pooja even prior to anybody having entered the house. It is submitted that the petitioner has been implicated only on the basis of disclosure statement made by Ramesh, co-accused and no recovery has been effected from the petitioner. Reliance has been placed upon the judgment passed in ***CRM-M-12051-2020***, by a Co-ordinate Bench of this Court dated 17.06.2021 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 regular bail. It is submitted that the petitioner is not involved in any other case and he has been in custody since 22.02.2021, and in spite of the order passed by this Court on 21.09.2021, as is apparent from the order dated 27.10.2021 passed by the trial Court, PWs Ankush and Ramphal Mor and PW Bimla Devi, who was served through her son, had

not appeared to give their evidence and had delayed the trial.

Learned State counsel, on the other hand, on instructions of SI Sanjay, has opposed the bail and has submitted that although, in the present case, the main accused are Ramesh and Pooja but the petitioner has been named as an accomplice by Ramesh in his disclosure statement and as per the disclosure statement of Pooja, injuries had also been caused to the deceased Jitender Singh by the accomplices and also that the said accomplices had disposed of the body of Jitender Singh and thus, they have been duly charged along with other accused for the offence under Section 201 IPC. However, the facts that the petitioner is not involved in any other case and no recovery has been effected from him and that there are 28 witnesses, are not disputed by the learned State counsel. Learned State counsel has further submitted that the material witness namely Ramphal (complainant) is yet to be examined in the present case.

This Court has heard learned counsel for the parties and has perused the record.

It is not in dispute that the present case is of circumstantial evidence. The petitioner was neither named in the FIR no.301 which was registered at Uttar Pradesh nor in the FIR no.757 registered at Sonipat. In fact, as per FIR no.757, after preliminary investigation, it had been found that Ramesh and Pooja, had committed the alleged offence, and they were stated to be in custody and even as per the disclosure statement dated 24.11.2020 of said Pooja, the petitioner had not been named and perusal of same would show that even before any person had entered the house of Pooja and the deceased Jitender Singh, said Pooja had given six sleeping pills to her husband Jitender Singh and had switched off the CCTV cameras

and had thereafter called Ramesh and stayed in touch with Ramesh, and the specific attribution of injuries has been made to Ramesh and a specific role has been attributed to said Pooja, but regarding the accomplices, which as per State counsel, also included the petitioner, no specific injury has been attributed to them. The petitioner has only been named in the disclosure statement of Ramesh and no recovery has been effected from the petitioner.

A Co-ordinate Bench of this Court in **CRM-M-12051-2020**, titled as “**Mewa Singh Vs. State of Punjab**” and in **CRM-M-12997-2020 titled as “Daljit Singh Vs. State of Haryana”**, has held 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 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.”

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

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.”

It would be a matter of trial as to whether the petitioner, who has been made an accused, only on the basis of disclosure statement of Ramesh, without there being any other incriminating evidence against the petitioner, could be held liable for the offence stated to have been committed or not. The petitioner has been in custody since 22.02.2021 and there are as many as 28 witnesses, out of which only one witness, i.e. PW Dharmender has been examined, and, thus, the trial is likely to take time, moreso, in view of the present pandemic. On 21.09.2021, the following order was passed by this Court:-

“Learned State counsel has submitted that four prosecution witnesses have been summoned to be examined for 27.10.2021 and every endeavour would be made to examine the said witnesses.

On request, adjourned to 10.11.2021.”

Learned counsel for the petitioner has further referred to the order dated 27.10.2021 passed by the Additional District & Sessions Judge, Sonipat, which is reproduced hereinbelow:-

“One PW Dharmender examined. Pws Ankush and Ramphal Mor reported to be personally served whereas PW Bimla Devi reported to be served through her son Dharmender but they did not appear. Presence of Pws Ankush, Ramphal Mor and Bimla Devi be secured through bailable warrant of Rs.5,000/- each for 09.12.2021. Presence of accused, who is in custody, shall be marked through VC only on the next date till further order and concerned jail authority shall do needful.”

Perusal of the above orders would show that although PWs Ankush and Ramphal Mor had been personally served and PW Bimla Devi had been served through her son Dharmender but they had not appeared. It is, thus, apparent that it is not the petitioner who is delaying the trial. It has been stated that the petitioner is not involved in any other case.

Thus, keeping in view the above said facts and circumstances, the present petition is allowed and the petitioner would be ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

It is, however, made clear that in case the petitioner tries to influence or threaten any witness, it is open to the State to move an application for cancellation of bail. The petitioner would also not delay the trial and would appear before the Court on every date unless he is specifically exempted by the Court.

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 petition.

(VIKAS BAHL)
JUDGE

November 10, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No