

CRM-M-37031-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(204)

CRM-M-37031-2020.
Date of Decision:-05.10.2021.

Teju Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: None for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a first petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.88 dated 07.06.2020 under Section 15 of the NDPS Act, 1985 and Section 29 of the NDPS Act, 1985 (added later on), registered at Police Station Nehianwala, District Bathinda.

On 21.12.2020, a Co-ordinate Bench of this Court had passed the following order:-

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

The petitioner has filed present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.88 dated 07.06.2020

registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') in Police Station Nehianwala, District Bathinda to which Section 29 of the NDPS Act was added lateron.

Learned Counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. As per the prosecution allegations co-accused Paramjit Singh son of Rashpal Singh and Gurmeet Singh were apprehended on the basis of secret information while transporting 100 sacks of poppy husk each weighing 19 kg in cater bearing HR-47-B-2867. In his disclosure statement Paramjit Singh alleged that they had purchased poppy husk as per directions of Paramjit Singh alias Pamma son of Balbir Singh and Harnek Singh and that Paramjit Singh alias Pamma son of Balbir Singh and Harnek Singh had direct conversation with Teju Singh and Liyakat from whom the poppy husk was purchased. The petitioner was not arrested on the spot and no recovery was made from him. The petitioner has been implicated in the present case on the basis of disclosure statement made by co-accused Paramjit Singh @ Pamma Son of Rashpal Singh which is of no evidentiary value. The petitioner has not committed any offence and is not involved in any other case under the NDPS, Act. Rigors of Section 37(1)(b) of the NDPS Act are not applicable/stand satisfied qua him. The petitioner is ready to join the investigation.

Short reply by way of affidavit of Ashok Kumar Sharma,

PPS, DSP, Bhucho (Bathinda) on behalf of respondent-State has been filed in the Registry which is taken on record.

Learned State Counsel has opposed the petition and submitted that the petitioner is accused of having committed serious offence and does not deserve grant of anticipatory bail. However, learned State counsel seeks time to file copies of the relevant documents.

Adjourned to 22.02.2021.

In the meanwhile, in view of the facts and circumstances of the case, 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 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.

Thereafter, the matter was adjourned to 22.02.2021 and on that day, the interim order was ordered to continue.

Learned State counsel, on instructions from ASI Balkar Singh, has submitted that in pursuance of the above-said orders, the petitioner has joined the investigation and is not required for any further investigation.

Keeping in view the above facts and circumstances, moreso, the fact that the petitioner has already joined the investigation and the petitioner was not apprehended on the spot and that he was made an

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accused only on the basis of disclosure statement of the co-accused and no recovery was effected from the petitioner and he is not involved in any other case, the present petition deserves to be allowed.

A Co-ordinate Bench of this Court in judgment passed in **CRM-M-12051-2020**, 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**”, 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 **(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.

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Petition stands disposed of.”

In view of the above, the present petition is allowed and the interim order dated 21.12.2020 is made absolute.

It is clarified that in case, the petitioner is involved in any other case under the NDPS Act, then liberty is granted to the State to move an application for cancellation of anticipatory bail granted by this 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 application.

(VIKAS BAHL)
JUDGE

October 05, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No