

CRM-M-43266-2021

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

(210)

CRM-M-43266-2021.
Date of Decision:-27.10.2021.

Mubeen

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gautam Dutt, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (Oral)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in Case FIR No.0484 dated 14.09.2019 under Sections 148, 149, 323, 302, 307, 506, 120-B IPC, Sections 25 and 54 of the Arms Act, 1959 and Sections 325, 201 and 212 of IPC (added later on), registered at Police Station Tauru, District Nuh.

The brief facts of the prosecution case are that Sagoon, son of Gafoor Khan had made a complaint to the police for taking action against 13 named persons and two persons who were unnamed for having committed the murder of Gafoor Khan and injuring 8 persons. The petitioner was not named in the FIR nor was any attribution with respect to any injury was made against the petitioner. One Jaikam, who was named as an accused in the FIR was arrested on 15.02.2020 on the allegation that the

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said Jaikam had fired on the complainant. The said Jaikam filed CRM-M-42964-2020 and a Co-ordinate Bench of this Court, vide order dated 05.01.2021, had granted regular bail to the said Jaikam. The Co-ordinate Bench had noticed the fact that out of 21 persons named as accused persons by the complainant, 12 were found to be innocent and the challan had been presented only qua 06 persons and the only injury attributed to the said Jaikam was to the complainant and not to the deceased and, thus, the concession of regular bail was granted. From the said Jaikam, as per the prosecution version, a country-made pistol was stated to have been recovered. It is on the basis of the disclosure statement of said Jaikam to the effect that he had purchased the said country-made pistol from the petitioner, the petitioner has been implicated in this case and has been in custody since 03.07.2021.

Learned counsel for the petitioner has argued that the petitioner has not been named in the FIR and has not been attributed with any overt act, as per the prosecution version. The petitioner has been implicated only on account of the statement made by Jaikam and no recovery has been effected from the petitioner. In support of his arguments, learned counsel for the petitioner has relied upon the judgment passed in ***CRM-M-12051-2020***, by a Co-ordinate Bench of this Court dated 17.06.2020 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”***, to contend 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

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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

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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

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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.

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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

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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.

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*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 is further submitted that Jaikam, co-accused of the petitioner, to whom there was an attribution of a gun-shot injury to the complainant, had been granted bail by a Co-ordinate Bench of this Court on

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05.01.2021 and the case of the petitioner is on a higher footing than that of Jaikam.

On the other hand, learned counsel for the State has opposed the bail application and has submitted that as per the disclosure statement of the said Jaikam, the country-made pistol which was recovered was sold by the petitioner to the said Jaikam. It is submitted that there is one more case against the petitioner under Section 379 of IPC.

Learned counsel for the petitioner, in rebuttal, has relied upon a judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others 2012 (2) SCC 382*** reference has been made to the relevant portion of paragraph 6 which is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

This Court has heard the learned counsel for the parties.

It is not in dispute that the petitioner was not named as an accused in the FIR. No injury either to the deceased or to any of the injured has been attributed to the petitioner. Nothing has been recovered from the petitioner and the petitioner has only been implicated on the basis of the statement of the co-accused Jaikam. It would be a matter of debate as to

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whether the petitioner could be prosecuted solely on the basis of disclosure statement of the co-accused Jaikam in trial. The said Jaikam has already been granted the benefit of regular bail by a Co-ordinate Bench of this Court vide order dated 05.01.2021 passed in CRM-M-42964-2020 and the case of the petitioner is on a better footing than that of Jaikam. The challan has been presented in the present case and there are 54 witnesses and none of them have been examined and, thus, the trial is likely to take time, moreso, in view of the present pandemic situation.

Keeping in view the above facts and circumstances, and also the law laid down in the judgments referred to above, the present petition deserves to be allowed.

Accordingly, the present petition is allowed and the petitioner is 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 the fact that he is not required in any other case.

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 27, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No