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

CRM-M-52467-2021

Date of decision : 16.12.2021

Ajay Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Arpandeeep Narula, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.506 dated 08.12.2021 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Civil Lines Sirsa, District Sirsa.

Learned counsel for the petitioner has submitted that in the present case, the petitioner has been sought to be implicated on the basis of disclosure statement of co-accused namely Chander Parkash, from whom the alleged recovery of 20 grams of heroin, which is less than the commercial quantity, had been effected. It is argued that as per law laid down in case titled **“Mewa Singh Vs. State of Punjab, CRM-M-12051-2020, decided on 17.06.2020** and in case titled as **“Daljit Singh Vs. State of**

Haryana, CRM-M-12997-2020 decided on 16.07.2021, merely on the sole ground of nomination of the petitioner on the basis of disclosure statement of co-accused, petitioner should not be denied the concession of anticipatory bail. It is further argued that no recovery had been effected from the petitioner.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that the petitioner is involved in four other cases.

Learned counsel for the petitioner, in rebuttal to the said argument, has referred to Chart which is at page 5 of the petition, as per which, it has been stated that first FIR was got registered by the Sarpanch i.e. FIR No.172 of 2019 registered under Sections 504 and 506 of the Indian Penal Code, 1860 on the ground that the petitioner had abused the Sarpanch on a telephone call. It is contended that the petitioner is on bail in the said case and from the said FIR, it is apparent that the Sarpanch of the village is against the petitioner and had threatened the petitioner that he would get him implicated in large number of other cases. It is further contended that even in the other three cases, the petitioner had been implicated on the basis of disclosure statement of the co-accused and no recovery had been effected from the petitioner and the petitioner is on bail in the said three cases also.

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

It is not in dispute that the recovery in the present case was from the co-accused namely Chander Parkash and not from the petitioner. It is also not in dispute that the recovery effected from the co-accused of the petitioner was 20 grams of heroin whereas commercial quantity of heroin is 250 grams and thus, the alleged recovery from the co-accused is much lesser than the commercial quantity. From the details which have been mentioned in the petition, it is prima facie clear that there was dispute between Sarpanch and the petitioner and thus, the argument of learned counsel for the petitioner to the effect that the Sarpanch was instrumental in falsely implicating the petitioner in the said four cases cannot be completely ruled out. At any rate, in all the said cases, the petitioner is on bail. Hon'ble the Supreme Court in case titled “Maulana Mohd. Amir Rashadi vs. State of U.P. and another”, reported as 2012 (2) SCC 382 has held as under:-

“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.”

A Coordinate Bench of this Court in **Mewa Singh's** case (Supra) has held as under :-

“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.”*

Another Coordinate Bench of this Court in “**Daljit Singh's** case (Supra) has held as under:-

“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)
archana 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 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.”

Keeping in view the aforesaid facts and circumstances, as well as law laid down in the above cited judgments, the present petition is allowed and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

16.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No