

CRM-M-2936-2022;
CRM-M-17115-2022
CRM-M-40853-2022

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(226)

1. CRM-M-2936-2022
Pardeep SharmaPetitioner
Versus
State of HaryanaRespondent
2. CRM-M-17115-2022
Jayaram JalariPetitioner
Versus
State of HaryanaRespondent
3. CRM-M-40853-2022
AjitPetitioner
Versus
State of HaryanaRespondent

Date of decision: - 22.11.2022

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Parminder Singh Sekhon, Advocate, for the petitioner
(In CRM-M-2936-2022).

Mr. Himanshu Puri, Advocate and
Mr. S.K. Singla, Advocate, for the petitioner
(In CRM-M-17115-2022).

Mr. Balkar Singh, Advocate for the petitioner.
(In CRM-M-40853-2022).

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This order shall dispose of three petitions. The first

**CRM-M-2936-2022;
CRM-M-17115-2022
CRM-M-40853-2022**

-2-

petition has been filed by petitioner Pardeep Sharma i.e., CRM-M-2936-2022; the second petition has been filed by petitioner Jayaram Jalari i.e., CRM-M-17115-2022 and the third petition has been filed by petitioner Ajit i.e., CRM-M-40853-2022.

The above said petitions have been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioners in FIR No.72 dated 18.05.2021, registered under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985; Section 25 of the Arms Act, 1959 and Sections 395, 427, 216 and 34 IPC, at Police Station Satnali, District Mahendergarh (District Narnaul).

Brief case of the prosecution is that secret information had been received to the effect that one Canter had been parked near Village Barda and since, there was suspicion that there were some intoxicant substances inside the same, and upon finding the said information to be credible, a police team was formed to conduct the raid. Efforts were made to join witnesses from the public, but people showed their inability to do so and when the police party reached near the Canter, no person was found present near it and thereafter, a notice under Section 42 of the Act of 1985 was prepared and was forwarded to the Duty Magistrate. The Duty Magistrate reached the spot and in his presence, the search of the Canter was conducted. During the search, huge quantity of Ganja i.e., 17 quintals 12 kg and 760 grams was recovered from the said Canter. During the search of cabin of the Canter, one Driving Licence issued in the name of Ravi Kumar and one Aadhaar Card also in the name of Ravi Kumar,

were recovered and the FIR was registered against unidentified persons.

During the course of investigation and on the basis of the call details, a total of 22 accused persons were arrested, including the present petitioners.

Learned counsel for the petitioners Pardeep Sharma and Jayaram Jalari has submitted that they are in custody since 30.05.2021 and there are 28 prosecution witnesses, out of whom only one has been examined, thus, the trial is likely to take time. It is further submitted that as far as the said petitioners Pardeep Sharma and Jayaram Jalari is concerned, the only material which is against them is their own disclosure statements and the record of calls between them and other co-accused, including Ravi. It is also submitted that the said petitioners are neither the owners of the Canter from which the recovery of *ganja* has been effected, nor the drivers of the same. It is argued that neither any recovery has been effected from the said petitioners, nor they were present at the spot and thus, there is no material to link the said petitioners with the alleged offence. It is further argued that even with respect to the call details, there is no transcript on record and as per the settled law, merely on the basis of the call details and the self incriminating disclosure statement, the petitioners cannot be convicted. It is also argued that petitioner Pardeep Sharma is not involved in any other case, whereas, petitioner Jayaram Jalari is involved in one more case under the NDPS Act, but he is on bail in the said case and for the said purpose, learned counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court in

“Maulana Mohd. Amir Rashadi Vs. State of U.P. and another”,
reported as 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment 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.”

It is further stated that although, as per the disclosure statement of the petitioners Pardeep Sharma and Jayaram Jalari, both the said petitioners are stated to be the persons who were also a part of the chain of supply of the contraband, but there is no tangible evidence to connect the said petitioners with the said supply chain.

Learned counsel for the petitioner Ajit has submitted that the petitioner Ajit has been in custody since 20.05.2022 and had earlier filed a petition for regular bail, which was dismissed as withdrawn at that stage on 01.08.2022, after noticing the fact that the challan against him had not been presented at that point in time. Subsequent to the passing of the said order dated 01.08.2022, the challan has been presented on 19.08.2022 against the petitioner and there are 28 prosecution witnesses, out of

whom, only one has been examined. It is further submitted that the petitioner Ajit is not involved in any other case under the NDPS Act. It is also submitted that even the said petitioner is neither the owner of the Canter nor the driver of the said Canter and no recovery has been effected from him. As per the case of the prosecution, the petitioner Ajit was one of the persons who had chased the Canter thinking there was liquor in the same and was not aware as to what was lying inside the said Canter. It is stated that there is no material against the petitioner Ajit to link him with the said alleged recovery and although there recovery of the Bolero vehicle has been effected from the petitioner Ajit, but the said vehicle belongs to the said petitioner and there is no recovery of any *ganja* from the said jeep/Bolero. It is also stated that co-accused Shree Chand, who was stated to be accompanying the petitioner Ajit, has already been granted the concession of regular bail by this Court, vide order dated 16.03.2022, passed in CRM-M-10260-2022.

Learned counsel for all the petitioners have relied upon a judgment of the Hon'ble Supreme Court of India in case titled as “**State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & another**”, along with other connected matters, ***reported as 2022(1) R.C.R. (Criminal) 762*** and have submitted that the case of the petitioners is on a better footing than the case of the petitioners in the said case, whose order granting bail, was upheld by the Hon'ble Supreme Court.

Learned State counsel, on the other hand, has opposed the present petitions for regular bail and has submitted that as per the

investigation, it was accused Pardeep Sharma and Jayaram Jalari who were the persons who had been actively involved in the supply chain of the said *ganja* which had been recovered from the Canter, which was owned by Ravi son of Om Parkash. It is also submitted that there are details of call exchanged between accused Pardeep Sharma, Jayaram Jalari, Ravi and other co-accused establishing the link between them. It is further submitted that as far as petitioner Ajit is concerned, apart from the Bolero jeep, a pistol had also been recovered from him and the said accused Ajit and his other associates had tried to rob the Canter thinking there was liquor in the same. Learned State counsel has pointed out that the recovery in the present case from the Canter is of 17 quintals 12 kilograms 760 grams of *ganja* and the said quantity is a huge quantity and would fall under the category of commercial quantity, thus, the bar under Section 37 of the NDPS Act would apply.

Learned counsel for the petitioner Ajit has submitted that even the recovery of pistol does not connect the petitioner Ajit with the chain of supply of the contraband recovered in the present case.

This Court has heard learned counsel for the parties and gone through the paper-book.

The Hon'ble Supreme Court of India in *State by (NCB) Bengaluru case (supra)*, has held as under: -

“xxx xxx xxx xxx xxx xxx xxx xxx xxx

Similarly, Mohammed Afzal[A-6], respondent in SLP (Crl.) No. 1454/2021 was arrested on an allegation that his Call details record (CDR) revealed that he was in constant conversation with A-2 and one

Abu Thahir @ Abdu [A-5]. Additionally, reliance was placed by the Department on the statement of A-5 recorded under Section 67 of the NDPS Act which purportedly revealed that both of them had arranged the drugs that were delivered to A-1 and A-2 on 22nd March 2019, who were going to carry the same in their luggage while flying to Doha. 3. Munees Kavil Paramabath [A-8], respondent in SLP (Crl.) No. 1454/2021 was purportedly found to be in conversation with A-2, A-6, A-7 and A-8 as per the CDR of A-5 on the date of the seizure. The petitioner-NCB claims that apart from the statement of A-5 recorded under Section 67 of the NDPS Act, he had also voluntarily stated during his examination that he was paid money by A-8 for financing the drugs. Abu Thahir @ Abdu [A-5] and Sabir Bayan [A-7], respondents in SP (Crl.) No. 1773-1774/2021 were similarly arrested on the statement of the co-accused, namely, A-2, A-6 and A-8 and on an allegation that flight tickets of A-1 were recovered from the house of A-5 and A-6.

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6. As for Munees Kavil [A-5], respondent in Criminal Petition No. 7897/2019 who was granted bail vide order dated 20th January, 2020 in the second case registered by the NCB, the basis for arresting him was the statement made against him by the co-accused, A-1 under Section 67 of the NDPS Act disclosing therein that A-5 had sent drugs to Doha on several previous occasions on instructions received from his brother and that he was financing the drug business.

7. Mr. S.V. Raju and Mr. K. M. Nataraj, learned Additional Solicitors General both appearing for the petitioner-NCB in the connected petitions have challenged the impugned orders primarily on the ground that the High Court has erred in returning a finding that the rigors of Section 37 of the NDPS Act are not attracted to the facts of the present cases; that none of the pre-conditions stipulated in Section 37 of the NDPS Act that starts with a non-obstante clause, had been met in the instant cases for granting any relief to the respondents and that a concession has been granted to the respondents on an erroneous presumption that there is a reasonable ground for believing that they are not guilty for such an offence. It has been vehemently argued by the learned Additional Solicitors General that in the instant

cases, there existed justifiable reasons to reject the bail applications of the respondents and there was hardly any ground to believe that they were not guilty of the offences alleged against them or that they are not likely to commit any such offence while on bail. 8. Vide order dated 05th January, 2020, learned counsel for the petitioners NCB were directed to prepare a comprehensive tabulated statement with respect to the role attributed to each of the respondents, the evidence gathered against them at the time of their arrest, their antecedents, the dates on which they were arrested and the period of custody undergone by them, for ready reference. The said tabulated statement has been filed and a perusal thereof reveals that in SLP (Crl.) @ Diary No.22702/2020, SLP (Crl.) No.1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) Nos. 1773-1774/2021, SLP (Crl.) No. 2080/2021, heavy reliance has been placed by the petitioner-NCB on the voluntary statements of the accused and the co-accused recorded under Section 67 of the NDPS Act for arresting them. Another piece of evidence referred to is the CDR details in respect of A-3, A-4, A-5, A-6 and A-8 in the first case which as per the prosecution, goes to show that the said respondents were constantly in touch with each other and with A-1 and A-2 on the date of the seizure. The attention of this Court was also drawn to the fact that the antecedents of A-5, A-6 and A-8 in the first case and A-2 and A-5 in the second case are not clean.

9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.

10. It has been held in clear terms in Tofan Singh Vs. State

of Tamil Nadu⁶ , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

A perusal of the above judgment would show that in the said case, there were allegations against the accused more specifically against the accused Nos.5, 6 and 8 to the effect that it had come forth from call details record that there were conversations between the said persons and the main accused, from whom the seizure of commercial quantity of drugs had been effected. There were also statements made by the said accused under Section 67 of the NDPS Act disclosing therein that the accused therein, more so accused No.5 had sent drugs to Doha on several previous occasions on instructions received from his brother and that he was financing the drug business and further to the extent that he had been paid money by accused No.8 for financing the drugs. It was also held that even the said accused Nos.5, 6 and 8 did not have clean antecedents. The

Hon'ble Supreme Court after considering the judgment in case titled as **“Tofan Singh Vs. State of Tamil Nadu”**, ***reported as 2021(4) SCC 1***, had observed that that the confessional statement recorded under Section 67 of the NDPS Act would remain inadmissible in the trial of an offence under the NDPS Act, thus, the arrests made on the basis of the confession/voluntary statements of the accused therein, could not form the basis for overturning the impugned orders releasing them on bail. Even with respect to the CDR details and the allegations of tampering of evidence made against the accused, it was observed that the same would be considered at the time of trial, thus, the bail granted to the said accused was upheld. However, the order granting bail to one of the accused i.e., accused No.2, granted by the High Court, was set aside inasmuch as, there was recovery of substantial commercial quantity of drugs from the rented accommodation occupied by him.

The facts of the above-said case are similar to the facts of the present case. All the three petitioners were neither named in the FIR, nor were apprehended at the spot, nor any recovery has been effected from them. The material which has been pointed out by the State against the said three petitioners is primarily their disclosure statements recorded under Section 67 of the NDPS Act and the call details inter se between them. Petitioners are neither stated to be the owners of the Canter in question, nor the drivers of the Canter from which the recovery of the *ganja* has been effected. As far as petitioner Ajit is concerned, although, there is recovery of Bolero jeep and a country made pistol effected from

him, but it is not from the said Bolero that the recovery of *ganja* has been effected. The allegation against petitioner Ajit as per the prosecution case is that he tried to rob the Canter in which *ganja* was being transported, which prima facie shows that he was not one of the persons who were a part of supply chain. At any rate, no recovery of any narcotic drugs, much less *ganja*, has been effected from petitioner Ajit also. Petitioners Pardeep Sharma and Jayaram Jalari are in custody since 30.05.2021 and petitioner Ajit is in custody since 20.05.2022 and the challan has been presented and there are 28 prosecution witnesses, out of whom, only one has been examined and thus, the trial is likely to take time.

Keeping in view the abovesaid facts and circumstances as also the law laid down in the abovementioned judgments, this Court deems it appropriate to grant the concession of regular bail to the petitioners. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act, 1985.

Accordingly, the present petitions are allowed and the petitioners are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to them not being required in any other case. The petitioners shall also abide by the following conditions:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize / intimidate the prosecution witness(s).
3. The petitioners will appear before the trial Court on the date

fixed, unless personal presence is exempted.

4. The petitioners shall not commit an offence similar to the offence of which they are accused of, or for commission of which they are suspected.
5. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of bail, before this Court.

However, 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 applications.

November 22, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes