

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-9403-2022

Date of decision : 04.04.2022

Jagsir Singh @ Jaggu

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.P.S.Sekhon, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

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.04 dated 12.01.2022 registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station Dharamgarh, District Sangrur.

On 07.03.2022, this Court was pleased to pass the following order:-

*“Learned counsel for the petitioner inter alia contends that in the present case, the alleged recovery of 300 intoxicant tablets have been effected from the co-accused and not from the present petitioner. It is submitted that the petitioner has been implicated on the pretext that the recovery has been effected from his wife. It is further submitted by the learned counsel for the petitioner that although, in the present case, FSL report has not been received but the recovery, as per his understanding, is of non-commercial quantity. He has relied upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported*

as 2021(1) RCR (Criminal) 1, an order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled “Mewa Singh Vs. State of Punjab”, and an order of another Coordinate Bench dated 16.07.2021 passed in CRM-M-12997-2020 titled as “Daljit Singh Vs. State of Haryana” to contend that in such a situation, the statement made by the co-accused before the police is an inadmissible piece of evidence.

Notice of motion.

On asking of the Court, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of State of Punjab and seeks time to get instructions.

Adjourned to 04.04.2022.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.

07.03.2022 **(VIKAS BAHL)**
JUDGE”

Learned counsel for the petitioner has submitted that in pursuance of the said order, the petitioner has joined the investigation.

Learned State counsel, on instructions from ASI Narinder Singh, has submitted that although the petitioner has joined investigation and is not required for further investigation, but the petitioner is involved in four other cases out of which one is under the Excise Act, in which the petitioner has been convicted, and two cases are under the NDPS Act, in both of which he has been convicted, and in one more case under the NDPS Act, the petitioner is undertrial.

Learned counsel for the petitioner, in rebuttal, has submitted that as far as the FIR no.115 dated 01.08.2005 under the NDPS Act is concerned, there was recovery of 5 kg. of poppy husk which is much less than the stipulated commercial quantity which starts from 50 kg. and in the

said case, the petitioner was released after having undergone custody period of only 12 days. It is further submitted that as far as FIR no.35 dated 10.07.2019 under the NDPS Act is concerned, the recovery was of non commercial quantity and the petitioner was released on bail vide order dated 19.08.2019. It is submitted that even in the third case of the NDPS Act in which the petitioner was convicted, the petitioner has already undergone the sentence awarded. Learned counsel for the petitioner 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.”

Keeping in view the above said facts and circumstances moreso, the fact that no recovery in the present case has been effected from the petitioner and the petitioner has been implicated on the basis of disclosure statement of co-accused and the quantity in the present case is of non-commercial quantity and also in view of the judgment of the Hon'ble Supreme Court in ***Maulana's*** case (supra), and also the fact that the petitioner has joined the investigation and is not required for further investigation, the present petition is allowed and the interim order dated

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 petition.

(VIKAS BAHL)
JUDGE

April 04, 2022

Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No