

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11586-2022 (O&M)

Date of decision: 27.10.2022

Bijender

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ankur Malik, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-39787-2022

For the reasons stated in the application, same is allowed and date of hearing is preponed from 16.01.2023 to today.

CRM stands disposed of.

CRM-M-11586-2022

Prayer in this 3rd petition is for grant of regular bail in FIR No.341 dated 12.05.2020 under Section 20 of NDPS Act and Sections 25 & 27-A of NDPS Act (added later on), registered at Police Station Sadar, District Bhiwani; earlier two petitions were dismissed on 25.11.2021 and 10.12.2021.

Learned counsel for the petitioner, at the very outset, relies upon the order dated 26.04.2022 passed in CRM-M-16174-2022, vide which co-

accused of the petitioner, namely Sazid @ Bhoora was granted the concession of regular bail. The operative part of the order reads as under: -

“...Counsel for the petitioner has relied upon the order dated 23.03.2022 passed in CRM-M No.11546 of 2022 vide which the co-accused of the petitioner namely Kundan Singh, has been granted the concession of regular bail. The operative part of the said order, reads as under:-

“Counsel for the petitioner has submitted that the FIR was registered at the instance of ASI Pankaj Kumar with the allegations that while on petrol duty, he received a secret information that the co-accused Jaipal son of Arjun is indulged in selling the intoxicant substance and he can be apprehended along with heavy quantity of intoxicant materials. Thereafter, a ruqa/notice under Section 42 of the NDPS Act was sent to the Police Station for registration of the case and a raiding party apprehended a person coming on a motorcycle, who disclosed his name as Jaipal. Thereafter, a notice under Section 50 of the NDPS Act was given to him and the Deputy Superintendent of Police, Headquarter was called at the spot and by following the procedure, 02 bags carrying 25 Kgs and 28 Kgs of Charas were recovered.

Counsel for the petitioner has also submitted that after the arrest of Jaipal, the co-accused Bijender was nominated in this case with the allegation that Jaipal and Bijender have brought the contraband in an Alto Car from Kerana, Uttar Pradesh and he can get the same demarcated. It was also stated in his disclosure statement that he has purchased the same from Bijender @ Rs.20,000/- per Kg. Thereafter, the police arrested Bijender and he also made a disclosure statement of committing the offence with Jaipal. In his disclosure statement, it is further stated that he has procured the same from one Bhoora son of Shahdeen, who is a big supplier of narcotics in Kerana, Uttar Pradesh and the Alto Car used by both the aforesaid accused was also recovered. Thereafter, Bhoora son of Shahdeen was arrested and he also recorded a disclosure

*statement that he has friendship with the present petitioner Kundan, who is resident of village Nainital, Uttarakhand and Bijender used to come in his shop in a car and used to take intoxicant substance. It is further stated that the petitioner was also indulged in the business of selling of intoxicant substance. Counsel for the petitioner has also submitted that the petitioner is a first offender and he is not involved in any other case and was nominated on the successive 3rd disclosure statement and therefore, it will be a debatable issue whether the disclosure statement made by the co-accused will be admissible against the petitioner or not in view of the judgment of the Hon'ble Supreme Court **"Tofan Singh vs State of Tamil Nadu", 2013(4) RCR (Criminal) 631.***

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position that in a sequence of the disclosure statement recorded by Jaipal, Bijender was nominated and again on the disclosure statement of Bijender, Bhoora was nominated and thereafter, on the disclosure statement of Bhoora, the present petitioner – Kundan was nominated in the case.

*After hearing the counsel for the parties, without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last 04 months and 23 days; the petitioner is not involved in any other case; the custodial interrogation of the petitioner is not required; the conclusion of the trial will take some time due to COVID-19 situation; the petitioner has been nominated in the case on the basis of the disclosure statement of the co-accused and in view of the judgment of the Hon'ble Supreme in **"Tofan Singh's case (supra)**, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate."*

For the sake of brevity, the facts are not reproduced again.

Counsel for the petitioner has argued that the name of the petitioner surfaced in the disclosure statement of Kundan Singh as well as co-accused Bijender Singh. It is also submitted that in pursuance to the disclosure statement, when the petitioner was

arrested, no recovery was effected from him and therefore, it will be matter of trial whether the disclosure statement of the co-accused is admissible against the petitioner or not as it was not followed by any recovery.

Counsel for the petitioner has further submitted that challan stands presented, charges have been framed, however, the prosecution evidence is yet to start and the petitioner is not involved in any other case of similar nature and he is in custody for the last 05 months and 26 days.

Counsel for the State on the basis of the Custody Certificate has not disputed the factual position but opposed the prayer for bail.”

For the sake of brevity, facts are not reproduced again.

Learned counsel submits that in the second disclosure statement of co-accused Jaipal, name of the petitioner surfaced. It is further submitted that as on today, the petitioner is in custody for the last about 02 years and 04 months; he is not involved in any other case and out of total 16 prosecution witnesses, only 02 PWs have been examined so far.

Learned State counsel, on the basis of status report by way of affidavit of Inspector Ramesh Chander, SHO, Police Station Sadar Bhiwani, has submitted that as per disclosure statement of co-accused Jaipal, he along with the petitioner purchased the contraband from co-accused Bhura and brought it from Kairana (UP) in the car of the petitioner, however, it could not be disputed that the petitioner is in custody for the last about 02 years and 04 months and is

not involved in any other case.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that two co-accused of the petitioner, who were also nominated in the FIR on the basis of disclosure statement, have already been released on regular bail; the petitioner is also nominated on the basis of disclosure statement of co-accused; he is in custody for the last 02 years and 04 months; out of total 16 prosecution witnesses, till date, only 02 PWs have been examined, therefore, it will take some time in conclusion of the trial, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

27.10.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No