

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-13072-2022

Date of Decision:-20.07.2022

Jagtar Singh @ Nikka.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Jashandeep Singh Sandhu, Advocate for the Petitioner.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.08 dated 28.01.2022 under Section 22(C) of the NDPS Act, 1985 and Section 29 of the NDPS Act added later on registered at Police Station Balianwali, District Bathinda, Punjab.

The brief facts of the case are that when the police party was on patrolling duty a person was seen with a bag, who on seeing the police party got perplexed and tried to turn back. The person was apprehended by the police and on him being apprehended, he disclosed his name as Hakam Singh. Search was conducted and from his possession a recovery of 230 strips of 10 tablets (2300 tablets) of CAVITOL (tramadol HCL SR Tablets I.P. 100 mg) was effected.

Hakam Singh during investigation confessed that he had

bought these recovered tablets from the present petitioner and on the basis of his disclosure statement the present petitioner was nominated as an accused vide DDR No.16 dated 29.1.2022 and he offence was enhanced under Section 29 of the NDPS Act. The petitioner was arrested on 29.01.2022 and a recovery of Rs.2,40,000/- was effected from him.

The Counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR and has only been named in the disclosure statement of his co-accused Hakam Singh. The evidentiary value of the said disclosure statement would be a matter of adjudication during the trial. Even otherwise, the Hon'ble Supreme Court in various judgments **Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Vs. Union of India 2021(1) RCR (Criminal) 704, State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta &Anr. 2022(1) RCR (Criminal) 762, Surinder Kumar Khanna Vs. Intelligence Officer, Director of Revenue Intelligence, 2018(3) RCR (Criminal) 954 and Sanjeev Chandra Aggarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590** has held that the disclosure statement of an accused against the co-accused would be inadmissible in evidence. He contends that the recovery of Rs.2,40,000/- from him in no manner suggest that the same was an outcome of his earnings from dealing with intoxicating tablets as has been suggested by the prosecution. He also refers to the violations of various provisions of NDPS Act to contends that the search and seizure from the petitioner is vitiated. He lastly contended that the Petitioner is in custody since 29.01.2022 and none of the 10 cited prosecution witnesses have been examined so far and, therefore, the petitioner is entitled to the concession of regular bail.

The learned State Counsel while referring to the reply dated 20.07.2022 submits that undoubtedly no recovery of any contraband was effected from him and he has been named in the disclosure statement of Hakam Singh but Rs.2,40,000/- has been recovered from him which as per his confession was earned by him by selling intoxicating tablets. He contends that there are two other FIRs against him i.e. FIR No.48 dated 28.06.2019 under Section 22, 61 and 85 of NDPS Act registered with P.S. Bhadaur , District Barnala and FIR No.145 dated 10.07.2019 under Sections 22, 29, 61, 85 of NDPS Act registered with PS Nathana, District Bathinda. In both these FIRs he has been nominated as an accused under Section 29 of the NDPS Act. He, therefore, submits that the Petitioner does not deserve the concession of bail because of his criminal antecedents.

I have heard counsel for both the sides at length.

Undoubtedly, there is absolutely no recovery from the Petitioner of any contraband. It would be a matter of adjudication during the trial as to whether the recovery of Rs.2,40,000/- is in fact the proceeds of crime or not. There are two other FIRs registered against the petitioner, however, in each of the FIR he has been nominated as an accused under Section 29 of the NDPS Act. With respect to the provisions of Section 37 of the NDPS Act, this Court in **Gurjant Singh Vs. State of Punjab** bearing CRM-M-20943-2022 Decided on 20.05.2022 has held as under:-

“ *A perusal of the Section 37 of the NDPS Act reveals that two conditions are to be satisfied cumulatively before an accused is granted bail/suspension of sentence (i) that the accused is not guilty of the offence & (ii) that he was not likely to commit any offence while on bail.*

With respect to the first condition, a reasonable ground for belief of the court could be recorded that the accused had

not committed an offence if there are violations of the mandatory provisions of the Act. Similarly where the evidence against the accused is scant or inadmissible once again a prima facie satisfaction of the court could be recorded that the accused had not committed an offence.

The difficulty arises with respect to the second condition wherein the Court is to record a finding that the accused was not likely to commit an offence while on bail. Recording of such a finding becomes onerous on the court because the future conduct of any person is not easy to predict. Obviously, where no other case is pending against the accused it would be easier to record a finding that the accused is not likely to commit such an offence in future. However, in a case where there are other pending cases/convictions under the NDPS Act against the accused, recording of this finding becomes challenging. The conduct of an accused in the past would be some indicator of his possible future conduct but mere past conduct cannot lead to assumption that his future conduct would be similar. Therefore, mere pendency of earlier FIR/convictions cannot lead to an assumption that the accused will and is likely to commit an offence in future thereby denying the accused the benefit of bail. There is another aspect of the matter. There could be a situation when in the case in which the accused seeks bail there is either a violation of a mandatory provision of the Act or there is scant evidence against him. However, there may be other pending FIRs/convictions against the said accused. In such a scenario, the satisfaction of the court that the accused has not committed an offence could be recorded but the satisfaction of the Court that the accused was not likely to commit an offence in future would be difficult for the court to record. This would lead to an anomalous situation because there would be hardly any prospects of conviction in the case in which bail is sought, but it would be denied due to pendency of the other FIRs/convictions. Therefore, undoubtedly the twin conditions

are to be satisfied cumulatively and not alternatively but primacy ought to be accorded to the first of the twin conditions because whatever may be criminal antecedents of the accused a judgment of conviction or acquittal can be recorded only on the basis of the evidence lead in the case in hand and the criminal antecedents of an accused have no role to play in the ultimate judgment of acquittal or conviction except to the extent of imposition of enhanced sentence in the case of a subsequent conviction. Having said that there could be cases where the antecedents are such that second of the twin conditions may assume greater importance. Therefore, in each case it would depend on the subjective satisfaction of the Court as to which of the twin conditions ought to be given precedence.

Also, where there is a substantial delay in the conclusion of the trial or in the final adjudication of an appeal against conviction, the satisfaction of Section 37 of the conditions under NDPS Act would not stand as a bar to grant bail/suspend sentence on account of the right to speedy trial envisaged under Article 21 of the Constitution of India.”

Coming back to the facts of the present case, in the light of the judgments in **Tofan Singh's case (supra)**, **Rakesh Kumar Singla's case (supra)**, **State by (NCB) Bengaluru's case (supra)**, **Surinder Kumar Khanna's case (supra)** and **Sanjeev Chandra Aggarwal & Anr.'s case (supra)** it would be a matter of adjudication during the trial as to the evidentiary value of the said disclosure/confessional statement of Hakam Singh inculcating the petitioner.

Undoubtedly, there is no recovery of any contraband from the applicant. Even in the other two cases registered against him he has been implicated with the aid of Section 29 of the NDPS Act, therefore, it would be a matter of adjudication during trial as to the culpability of the petitioner

in the present case. The petitioner is in custody since 29.01.2022 and none of the 10 cited prosecution witnesses have been examined so far. Thus, the trial is not likely to be concluded in near future.

In view of the above, but without commenting on the merits of the case, the present petition is allowed and the petitioner **Jagtar Singh @ Nikka** son of Sh. Bhura Singh is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing each time that he is not involved in any other crime other than those mentioned above in this order.

If the petitioner commits a similar offence for which he is currently charged while on bail, the State would be at liberty to move an application for cancellation of bail.

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

July 20, 2022

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>