

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-17928-2022

Date of decision : 06.05.2022

Chanderpal

... Petitioner

Versus

State of Haryana

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sandeep Singh, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.315 dated 13.10.2020 registered under Sections 15 and 27-A of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station Bhuna, District Fatehabad.

Learned counsel for the petitioner has submitted that in the present case the petitioner was not named in the FIR nor any recovery has been effected from the petitioner and the alleged recovery of 20 kg. poppy husk has been effected from the co-accused Ashok and Kuldeep which is far lesser than from the commercial which starts from 50 kg. poppy husk. It is further submitted that the petitioner is sought to be implicated in the present case solely on the basis of disclosure statement of said co-accused Ashok and Kuldeep and even after the recording of the said disclosure statement,

petitioner has been in custody since 08.02.2022 and the challan has already been presented and there are 23 prosecution witnesses and none of them have been examined. Learned counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in case titled as ***“Tofan Singh vs. State of Tamil Nadu”*** reported as ***2021(4) SCC 1*** and judgment passed in ***CRM-M-12051-2020***, by a coordiante Bench of this Court dated 17.06.2021 titled as ***“Mewa Singh Vs. State of Punjab”*** to contend that the disclosure statement made before the police is inadmissible in evidence.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is also involved in 8 other cases and thus, does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal, has submitted that out of said 8 cases, in 4 cases, the petitioner has been acquitted and in one case, he has been released on probation and in the remaining cases, he has been convicted but he has been granted suspension of sentence and only one case is pending in which also, the petitioner has been released on bail. He 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.”

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

The Hon'ble Supreme Court in ***Tofan Singh's case*** (Supra), had observed as under:-

“152. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under [section 42](#) or [section 53](#) can be the basis to convict a person under the [NDPS Act](#), without any non obstante clause doing away with [section 25](#) of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.”

A Coordinate Bench of this Court ***Mewa Singh's case*** (Supra), had passed the following order-

“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.”

In the present case, it is not dispute that the petitioner was not named in the FIR nor any recovery has been effected from the present petitioner and the alleged recovery which has been effected from co-accused Ashok and Kuldeep is of 20 kg. of poppy husk, which is lesser than the commercial quantity, which starts from 50 kg. poppy husk. The petitioner is sought to be implicated solely on the basis of disclosure statement and even after the said disclosure statement, no recovery has been

effected from the petitioner. The petitioner has been in custody since 08.02.2022 and there are 23 prosecution witnesses and none of them has been examined, thus, the trial is likely to take time.

Keeping in view the above said facts and circumstances and in view of the law laid down in *Tofan Singh's* case (supra), *Mewa Singh's* case (supra) and *Maulana's* case (supra), the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to him not being required in any other case.

Nothing stated above shall be construed as a final 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

May 06, 2022
Davinder Kumar

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