

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-19332-2022
Date of decision : 13.05.2022

Vikramjit Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Sachin Ohri, Advocate
for the petitioner.

Mr.Sukhbeer Singh, AAG, Punjab.

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.160 dated 18.09.2020 registered under Section 21-22-61-85 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) (Section 29 of the NDPS Act added later on) at Police Station Division no.1, Pathankot.

Learned counsel for the petitioner has submitted that in the present case, no recovery has been made from the petitioner. It is submitted that the alleged recovery has been made from two persons i.e. Rakesh Sharma and Ravdeep Singh @ Sheru. It is further submitted that the petitioner has been implicated solely on the basis of the disclosure statement of both the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and has submitted that even subsequent to the disclosure statement, no recovery has been effected from the petitioner. It is further submitted that the petitioner is

not involved in any other case and he has been in custody since 19.04.2021 and in the present case, investigation is complete and the challan has been presented. There are 32 witnesses, out of which, one witness has been partially examined and, thus, the trial is likely to take time.

Learned counsel for the petitioner 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*, and order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled "*Mewa Singh Vs. State of Punjab*", to contend that the 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 there are details of calls exchanged between the petitioner and other co-accused.

Learned counsel for the petitioner, in rebuttal, has submitted that as per the affidavit and report under Section 173 Cr.P.C., there are no details as to on what date, the alleged calls had been exchanged and at any rate, there is no transcript of the said call details and has relied upon the judgment of the Division Bench in *CRM-A-1065-MA of 2016* titled as "*Narcotics Control Bureau Vs. Sandeep*", decided on 01.08.2018 as well as the judgment of the Gujarat High Court in *Yash Jayeshbhai Champaklal Shah Vs. State of Gujarat*, reported as *2022 SCC Online Guj 271*, to contend that where there are no recordings of conversations exchanged between the accused, then the same cannot be treated as corroborative material in absence of substantive material found against the accused. Reliance has also been placed on judgment of the Hon'ble Supreme Court in *Bharat Chaudhary Vs. Union of India* reported as *2021 SCC Online SC*

1235, to argue that reliance placed on Whatsapp messages cannot be treated as sufficient material to establish a live link between the accused in the case when most of the scientific reports with respect to the said evidence are still awaited. Learned counsel for the petitioner has also submitted that co-accused of the petitioner, i.e. Vikrant Singh, Subash Chander @ Bittu and Davinder Singh have already been granted bail by this Court vide order dated 06.04.2022 and the case of the present petitioner is on a similar footing as that of the said persons.

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

It is not in dispute that the petitioner has not been named in the FIR. No recovery has been effected from the petitioner and the alleged recovery has been effected from two co-accused Rakesh Sharma and Ravdeep Singh alias Sheru. The petitioner is sought to be implicated solely on the basis of the disclosure statement made by the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and even after the petitioner was arrayed as accused in pursuance of the disclosure statements, no recovery had been made from the petitioner.

The petitioner has been in custody since 19.04.2021 and challan in the present case has already been presented and there are 32 witnesses, out of whom only one has been examined and thus, the trial is likely to take time. The petitioner is not involved in any other case. With respect to the call details, suffice to say that no dates on which the said calls had been allegedly made by the co-accused, Rakesh Sharma and Ravdeep Singh alias Sheru to the petitioner or vice-versa have been mentioned in the affidavit or in the report under Section 173 Cr.P.C. Moreover, even the

transcript of the said conversations are not a part of the record under Section 173 Cr.P.C. A Division Bench of this Court in **Narcotics Control Bureau's case (supra)**, was pleased to observe as under:-

“Still further, no conversation detail between accused Ramesh Kumar Patil and accused Sandeep has been produced by the prosecution. Mere call details is not sufficient to prove that Sandeep accused was also involved in the business of narcotic drugs or he had any connected with Ramesh Kumar Patil.

In view of the above, no case is made out for grant of leave to appeal against the acquittal of Sandeep accused.”

In judgment of the Gujarat High Court in **Yash Jayeshbhai Champaklal Shah's case (supra)**, it has been observed as under:-

“Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused.”

A perusal of the above judgment would show that without the transcript of the conversations exchanged between the co-accused, mere call details would not be considered to be corroborative material in absence of substantive material found against the accused. In the present case, there is no other material against the petitioner. The co-accused of the petitioner, i.e. Vikrant Singh, Subash Chander @ Bittu and Davinder Singh have been granted regular bail vide order dated 06.04.2022 and the case of the petitioner is on similar footing as that of the co-accused.

Keeping in view the above-said facts and circumstances, as

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.

However, 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 application.

(VIKAS BAHL)
JUDGE

May 13, 2022
Davinder Kumar

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