

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

CRM-M-21389-2021

Date of Decision:-07.04.2022

Dilbagh Singh @ Baga.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

Present:- Mr. G.S. Salana, Advocate for the Petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The petitioner seeks the grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.31 dated 26.02.2021 for offences punishable under Sections 21(c), 25 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Special Task Force, STF Wing.

On 28.05.2021 following order was passed:-

“ Case has been taken up for hearing through Video Conferencing.

This petition under Section 438 Cr.P.C. has been moved by petitioner for grant of pre-arrest bail in case FIR No.31 dated 26.02.2021 under Sections 21(c), 25 and 29 of NDPS Act, registered at Police Station Special Task Force, District STF Wing.

Learned counsel for the petitioner inter alia contends that allegations levelled in the FIR are totally concocted, false and

frivolous and there is no iota of truth therein. He further urges that allegedly co-accused namely Gurnam Singh @ Bablu and Gurpreet Singh @ Gopi were apprehended on the spot alongwith contraband (heroin) weighing 255 grams. He further urges that it is nowhere the case of Investigating Agency that petitioner fled away from the spot. He further urges that alleged involvement of petitioner is being shown merely in terms of disclosure statements rendered by co-accused namely Gurnam Singh @ Bablu and Gurpreet Singh @ Gopi on the allegations that above said contraband was given to them by petitioner. He further urges that petitioner is not involved in any other case FIR. He further urges that in view of above, as allegedly contraband was recovered at the instance of co-accused namely Gurnam Singh @ Bablu and Gurpreet Singh @ Gopi, no conscious possession of said contraband can be attributed to petitioner and, thus, rigours of Section 37 of NDPS Act cannot be attracted against the petitioner. He further submits that petitioner is ready to join investigation as and when called upon to do so by the Investigating Agency.

Notice of motion.

At the asking of Court, Mr. Mehardeep Singh, Addl. A.G., Punjab, accepts notice on behalf of respondent-State and seeks time to furnish detailed reply. Complete copy of paper book be supplied to him during the course of the day.

Adjourned to 16.07.2021.

Reply by respondent-State be filed with the Registry of this Court well before the date fixed with copy in advance to learned counsel for the petitioner.

Meanwhile, in the eventuality of arrest of petitioner in the instant case FIR, he shall be enlarged on interim bail subject to his furnishing personal/surety bonds to the satisfaction of Arresting Officer/Investigating Officer. Petitioner shall join investigation as and when called upon to do so by Investigating Agency. Petitioner shall abide by conditions as laid down in Section 438(2) Cr.P.C. in letter and spirit.

The petitioner joined investigation. However, a status report dated 09.07.2021 was submitted by Mr. Arun Sharma, DSP, STF Border Range, Amritsar. As per the said status report the arrested accused, namely,

Gurpreet Singh @ Gopi and Gurnam Singh @ Bablu on being arrested had named the petitioner. As per their disclosure statement, the petitioner, was a supplier of Heroin to Gurpreet Singh @ Gopi and Gurnam Singh @ Bablu who further started supplying the same to the customers of the petitioner. The disclosure statements were attached with the reply as Annexure R-1/T and Annexure R-2/T. When the matter came up for hearing before this Court on 14.02.2022 the following order was passed:-

“ The learned counsel for the petitioner states that the petitioner has joined the investigation.

On the other hand, the learned State counsel states that the petitioner has joined the investigation but not co-operating with the same.

A perusal of the disclosure statement of Gurpreet Singh @ Gopi would show that it was the petitioner who allegedly supplied the narcotic substance to Gurpreet Singh @ Gopi and his brother-Gurnam Singh @ Bablu, who would then further supply the same to the person named by the petitioner-Dilbagh Singh @ Baga.

On a query to the learned counsel for the State, he fairly admits that there has been no investigation qua those person to whom, Gurpreet Singh @ Gopi and his brother-Gurnam Singh @ Bablu were supplying hereoin at the asking of the petitioner-Dilbagh Singh @ Baga. In this view of the matter, the veracity of the disclosure statement is suspect. He seeks time to clarify this issue.

Adjourned to 28.03.2022.

Interim order to continue. ”

As per the aforementioned order it was specifically pointed out that the investigating agency had not conducted any investigation as to whom Gurpreet Singh @ Gopi and his brother Gurnam Singh @ Bablu supplied heroin on the asking of the petitioner, thereby casting serious doubts on the veracity of the said disclosure statements.

Be that as it may, a second status report dated 26.03.2022 has

been submitted by the same officer once again. A perusal of the report once again reveals that the petitioner has joined investigation but did not co-operate in as much as he has not disclosed any thing about the source of heroin which was supposed to be supplied by him to the co-accused Gurnam Singh@ Bablu and Gurpreet Singh @ Gopi. Reference has also been made to the tower location of the mobile phone of the petitioner to contend that petitioner was in the area of village Bhattewal, Tehsil Ajnala, District Amritsar on 26.02.2021 where he is said to have supplied the heroin to the arrested accused.

The Counsel for the State has supported the contents of the affidavit while admitting the fact that the petitioner has joined investigation but has not co-operated with the police.

I have heard learned Counsel for both the parties at some length.

As per the judgments of the Hon'ble Supreme Court and this Court **Tofan Singh Vs. State of Tamil Nadu, 2020 AIR (Supreme Court) 5592, Rakesh Kumar Singla Vs. Union of India 2021(1) RCR (Criminal) 704 , Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954 & State by (NCB) Bengaluru Vs. Pallulabid Ahmad Aarimutta & Anr. 2022(1) RCR (Criminal) 762** any statement made by an accused to a police officer inculcating the accused and/or another accused cannot be read in evidence. So far as not disclosing the alleged source of heroin as has been set out in the affidavits of the State, it may be relevant to mention here that the Hon'ble Supreme Court in **Santosh Vs. The State of Maharashtra 2017(4) RCR (Criminal) 590** has held as under:-

“ It appears, the IO was of the view that the custody of the appellant is required for recording his confessional statement in terms of what the co-accused had already stated in the Statement under [Section 161](#) of the Code of Criminal Procedure, 1973. The IO was of the opinion that the appellant was not cooperating because he kept reiterating that he had not purchased the food-grains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in [Article 20\(3\)](#) of the Constitution. It is a well settled position in view of the Constitution Bench decision in [Selvi and others v. State of Karnataka](#)¹, that [Article 20\(3\)](#) enjoys an “exalted status”. This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. **Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation.** However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail.”

As has been mentioned in the order dated 14.02.2022, no attempt whatsoever has been made by the investigating agency to determine the recipients of heroin purportedly supplied by Gurnam Singh @ Bablu and Gurpreet Singh @ Gopi, as per the said disclosure statement. The alleged non disclosing of the source of drugs amounting to non-cooperation, presupposes the commission of offence of purchase and supply of contraband. Such alleged non disclosure itself cannot amount to non cooperation in the light of Article 20(2) dis-entitling the accused to the grant of anticipatory bail. This is moreso, if there is no other substantive evidence against the accused and he does not have any similar cases pending against him.

So far as the phone records are concerned, they would be

corroborative evidence and in the absence of the evidence as to the contents of the phone conversation between the accused mere similarity in the tower location of all the accused would not be sufficient to deny the petitioner the concession of anticipatory bail.

In view of the above, given the fact that the petitioner has joined investigation and the fact that he has been named in the disclosure statement of his co-accused which is inadmissible in evidence, the interim order dated 28.05.2021 is made absolute.

However, the petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial.

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

Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

April 07, 2022
Vinay

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