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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-25223-2022.
Decided on : July 06, 2022.

Vishal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.Ashwani Kumar Antil, Advocate for the petitioner.

Mr.Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is the first petition filed under Section 439 Cr.P.C.

Praying for the grant of of regular bail to the petitioner in FIR No.160 dated 18.09.2020, under Sections 20/22/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Division No.1, District Pathankot and DDR entry bearing No.31 dated 29.9.2020 which was made for enhancing offence in this regard.

Learned counsel for the petitioner has submitted that in the present case the petitioner has not been named in the FIR and no recovery has been effected from the petitioner. It is submitted that the alleged

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recovery has been effected from two persons i.e. co-accused Rakesh Sharma and Ravdeep Singh @ Sheru. It is further submitted that the petitioner has been implicated solely on the basis of the disclosure statements of the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and has submitted that even subsequent to the said disclosure statements, no recovery has been effected from the petitioner. It is further submitted that the petitioner is not involved in any other case and is in custody since 10.4.2021 and the investigation is complete and challan has been presented and there are 32 witnesses out of which only 1 witness has been examined partly and thus, the trial is likely to take a long time. Learned counsel for the petitioner has further submitted that co-accused Vikrant Singh, Subash Chander @ Bittu and Davinder Singh have been granted bail by this Court vide order dated 6.4.2022 passed in a connected matter bearing number CRM-M-39657-2020.

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 an 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 and since the petitioner has been implicated solely on the basis of the disclosure statements of the co-accused which would be inadmissible in evidence, he deserves the concession of regular bail.

Learned counsel for the State, on the other hand, has opposed the grant of regular bail to the petitioner and has submitted that in the present case a huge recovery of contraband has been effected from co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and the said persons have further named the present petitioner in their disclosure statements as the person to whom said narcotic drugs had to be sold.

This Court has heard the 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.”*

Another Coordinate Bench of this Court in ***Daljit Singh's case***

(Supra), had passed the following order:-

“Petitioner seeks grant of anticipatory bail under Section 438 Cr.P.C. in case bearing FIR No.188 dated 08.04.2020 registered under Sections 15, 18, 27A, 29 of NDPS Act, under Sections 140, 188, 216, 419, 420, 467, 468, 471, 474 IPC and under Section 6 of Official Secret Act at Police Station Pehowa, District Kurukshetra.

Petitioner has been implicated on the basis of disclosure statement of co-accused from whom 248 kgs of poppy husk, 1 Kg 500 grams of opium and 199 Kgs khas khas were recovered.

FIR was registered on the basis of secret information, but still name of petitioner did not figure in the ruqa of the police.

Notice of motion was issued on 27.05.2020 alongwith interim directions in favour of the petitioner to join the investigation.

Order dated 27.05.2020 is reproduced here as under:-

“On account of outbreak of covid-19 the instant matter is being taken up through video conferencing.

Instant petition has been filed under Section 438 Cr.PC for grant of anticipatory bail to the petitioner in FIR No.188 dated 8.4.2020 for the offences under Section 15,18,27-A,29 of NDPS Act, 1985 at Police Station Pehowa, District Kurukshetra.

Learned counsel for the petitioner has inter alia contended that the petitioner is innocent and has been falsely implicated in the case only on the basis of disclosure statement of co-accused from whom recovery of 248 kgs of poppy husk, 1 kg 500 grams of opium and 199 kgs.of khas khas was recovered. It has been further contended that the factum of his false implication is further fortified from the fact that the recovery of the aforementioned narcotic contraband was effected on the basis of secret information and his name did not figure either in the ruka sent by the police nor in the FIR in question coupled with the fact that nothing was

recovered from him. He is not even involved in any other case of similar nature.

Notice of motion for 10.7.2020.

On the asking of the Court, Mr. Saurabh Mohunta, DAG., Haryana accepts notice.

Meanwhile, petitioner is directed to join the investigation and appear before the investigating agency/Investigating Officer. On his appearance, he shall be released on interim bail to the satisfaction of arresting/investigating officer. The petitioner shall, join the investigation as and when call for and shall abide by the conditions specified under Section 438(2) Cr.P.C.

27.05.2020 (MANJARI NEHRU KAUL)
archana JUDGE

Thereafter, the case was adjourned for filing detailed reply on behalf of the State.

The stands of the State is that the petitioner was escorting the canter in which the contraband was present and he was assigned the duty of giving signal in case of presence of police on the way.

Learned State counsel relies upon call details, tower location of the petitioner and the co-accused and also relies upon bank statement showing deposit of amount in the account of co-accused. The material on which the learned State counsel relies upon is dependent upon the evidence to be led in that context at the relevant stage.

Petitioner has joined the investigation, but learned

State counsel seeks custody of the petitioner on the aforesaid premise.

Having heard learned counsel for the parties, I find that the petitioner having involved on the basis of disclosure statement of co-accused namely Balbir and Rajinder is hit by the ratio of Tofan Singh vs State of Tamil Nadu, Criminal Appeal No.152 of 2013 wherein it has been observed that the officers who are invested with powers under Section 53 of NDPS Act are the police officers within the meaning of Section 25 of the Evidence Act. Any confessional statement made before the police officer would be hit by Section 25 of the Evidence Act. Statement under Section 67 of NDPS Act cannot be used as a confessional statement in the trial of an offence under NDPS Act.

In view of aforesaid position, it would be just and appropriate to confirm order dated 27.05.2020, without meaning anything on the merits of the case.

Ordered accordingly.

However, the petitioner shall keep on joining the investigation as and when required to do so by the Investigating Officer and shall abide by the conditions as envisaged under Section 438(2) Cr.P.C.

Petition stands disposed of.”

In the present case, it is not in dispute that the petitioner is not named in the FIR and no recovery has been effected from him. The alleged recovery has been effected from the co-accused of the petitioner namely Rakesh Sharma and Ravdeep Singh @ Sheru and the petitioner is stated to

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be implicated solely on the basis of the disclosure statements made by the above said co-accused and even after the petitioner was arrayed as an accused in pursuance of the disclosure statements, no recovery had been effected from the petitioner. The petitioner is in custody since 10.4.2021 and the investigation is complete and the challan has been presented and there are 32 witnesses out of which only one witness has been examined partially and thus, the trial is likely to take time. The petitioner is not involved in any other case.

Keeping in view the above said facts and circumstances and also in view of law laid down in the above cited judgments, the present petition is allowed and it is ordered that the petitioner shall be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate in case not required in any other case.

Nothing stated above shall be construed as an 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.

July 06, 2022.
raj arora

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No