

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-33575-2021

Date of decision : 29.07.2022

Ohasugo

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Arjun Veer Sharma, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is the petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.27 dated 04.04.2021 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Cantonment, Jalandhar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 15.04.2021 and there are 13 prosecution witnesses and out of which, two witnesses have been examined and thus, the trial is likely to take time. It is further submitted that as per the prosecution case, the alleged recovery has been effected from two co-accused namely Mary Nyambura and Okafor Paul Chukwunweiken and not from the present petitioner. It is stated that the petitioner is sought to be implicated solely on the basis of disclosure statement of the said co-accused and the petitioner was arrested on 15.04.2021 and even after his arrest, no

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 recovery in the present case is of commercial quantity and the present petitioner is involved in one more case under the NDPS Act and two cases under the Prisons Act and thus, does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal, 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.”

The petitioner has been in custody since 15.04.2021 and the challan has already been presented and there are 13 prosecution witnesses, and out of which, two witnesses have been examined, and thus, the trial is likely to take time. Even as per the prosecution case, the alleged recovery is from the two co-accused namely Mary Nyambura and Okafor Paul Chukwunweiken and not from the present petitioner. The petitioner has been implicated on the basis of disclosure statement of said co-accused and even after his arrest on 15.04.2021, no recovery has been effected from the present petitioner.

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.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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

July 29, 2022
Davinder Kumar

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