

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-35850-2022

Date of decision : 09.12.2022

Gurwinder Singh alias Giani PK

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Jashandeep Singh Sandhu, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr.DAG, 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.55 dated 05.07.2021 registered under Section 21, 22(c), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short "NDPS Act") at Police Station Bhadaur, District Barnala, Punjab.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 12.08.2021 and the investigation is complete and the challan has already been presented and there are 19 witnesses, out of which, none have been examined and thus, the trial is likely to take time. It is further submitted that although the petitioner along with one Balwant Singh was named in the secret information and in the FIR subsequent to which *nakabandi* was done but the present petitioner was not apprehended from the same and no recovery was effected from the present

Balwant singh was apprehended from whom intoxicant tablets / intoxicant powder was recovered. It is further submitted that the petitioner was arrested in the present case after obtaining production warrant on 12.08.2021 as he was lodged in another FIR and even after he had been arrested in the present case, no recovery much less of any intoxicant tablets / substance was effected from the present petitioner. It is stated that even as per the reply filed by the State, there is no tangible evidence connecting the present petitioner with the alleged offence other than the secret information and the disclosure statement of the co-accused. 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*** in support of his arguments.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that as per the case of the prosecution, the petitioner was named in the secret information and was also found to be one of the persons who was involved in the drug chain but however it has not been disputed that no recovery has been effected from the present petitioner. It is also not disputed that there is no material to show that there was any phone call between the petitioner and the said co-accused. It is however, submitted that the petitioner is involved in two other cases.

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.”

In the present case it is not disputed that neither any recovery has been effected from the petitioner nor the petitioner was apprehended in pursuance of the secret information which was the basis of registration of the present FIR. Other than the disclosure statement of the co-accused and the fact that the petitioner was named in the secret information, no material has surfaced so as to show that there is any tangible evidence to implicate the petitioner. The said aspects would show that the petitioner has a reasonable chance of acquittal, however, no final finding regarding the same is being given as the same would prejudice the case of either of the parties

course of trial. The petitioner has been in custody since 12.08.2021 and the investigation is complete and the challan has already been presented and there are 19 witnesses, out of which, none have been examined and 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 the abovesaid judgments, 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. The petitioner shall also abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize / intimidate the prosecution witness(s).
3. The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
4. The petitioner shall not commit an offence similar to the offence of which he is accused of, or for commission of which they are suspected.
5. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

In case of breach of any of the above conditions, the prosecution shall be at liberty to move an application for cancellation of

bail, before this Court.

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

December 09, 2022
Davinder Kumar

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