

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRM-M-36418-2022

Sanjay Parkash Tiwari

... Petitioner

Versus

State of Haryana

... Respondent

2. CRM-M-36733-2022

Shankar

... Petitioner

Versus

State of Haryana

... Respondent

3. CRM-M-48241-2022

Sachin Kwatra

... Petitioner

Versus

State of Haryana

... Respondent

4. CRM-M-35048-2022

Sushil Kumar

... Petitioner

Versus

State of Haryana

... Respondent

Date of decision : 17.11.2022

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Sandeep Kotla, Advocate
for the petitioner in CRM-M-36418-2022 &
CRM-M-35048-2022.

Mr.Abhimanyu Singh, Advocate
for the petitioner in CRM-M-48241-2022.

Mr.H.P.S.Ishar, Advocate,
Ms.Sakshi Saini, Advocate &
Mr.Mandeep Singh, Advocate
for the petitioner in CRM-M-36733-2022

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This order will dispose of four criminal miscellaneous petitions filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioners in FIR No.282 dated 28.06.2022, registered under Sections 22/29/61 of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Model Town, District Panipat.

The first petition has been filed by petitioner-Sanjay Parkash Tiwari i.e. CRM-M-36418-2022, the second petition has been filed by petitioner-Shankar i.e. CRM-M-36733-2022, the third petition has been filed by petitioner-Sachin Kwatra i.e. CRM-M-48241-2022 and the fourth petition has been filed by petitioner-Sushil Kumar i.e. CRM-M-35048-2022.

Learned counsel appearing for petitioner Sushil Kumar stated that he be permitted to withdraw the present petition, at this stage.

In view of the same, the petition i.e. CRM-M-35048-2022 filed by Sushil Kumar is permitted to be withdrawn, at this stage.

Learned counsel for the petitioners Sanjay Parkash Tiwari, Sachin Kwatra and Shankar have jointly submitted that neither the petitioners in the present case were named in the FIR, nor any recovery was effected from them, nor they were named in the secret information. It is submitted that the alleged recovery has been effected from Sushil Kumar

and said Sushil Kumar in disclosure statement had named petitioner Shankar and Shankar had further named petitioner Sachin Kwatra and Sachin Kwatra had named one Ravi Shukla in his disclosure statement and Ravi Shukla had named petitioner Sanjay Parkash Tiwari. It is further submitted that even after the said petitioners were named in the disclosure statements of the above said persons, no recovery of any narcotic drugs has been effected from the present petitioners. It is also submitted that there is no other incriminating evidence against the present petitioners other than the disclosure statement of the co-accused and on the said aspect, reliance has been placed 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**.

Learned State counsel, on the other hand, has opposed the present petitions for regular bail and has submitted that recovery from co-accused Sushil Kumar is of commercial quantity and thus, bar under Section 37 of the NDPS Act would apply. It is submitted that from Sanjay Parkash Tiwari, recovery of Rs.1000/- has been effected, from Sachin Kwatra recovery of Rs.2000/- has been effected and from Shankar, recovery of Rs.1000/- has been effected. It is further submitted that although Sanjay Parkash Tiwari and Shankar are not involved in any other case but Sachin is involved in three other cases.

Learned counsel for the petitioners, in rebuttal, has submitted that the recovery of the said money can not be linked to the present occurrence inasmuch as it is not the case of the prosecution that any number of said currency was noted. It is submitted that mere recovery of money which belongs to the petitioners cannot be considered to be incriminating

substance to link the petitioners with the offence.

Learned counsel for the petitioner Sachin Kwatra has submitted that petitioner Sachin Kwatra is on bail in all the said three cases and 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.”

It is not in dispute that the petitioners were not named in the FIR, nor in the secret information, nor any recovery of narcotic drugs has been effected from the petitioners Sanjay Parkash Tiwari, Sachin Kwatra

and Shankar. The alleged recovery has been effected from Sushil Kumar who in his disclosure statement had named Shankar, Shankar in his disclosure statement had named Sachin Kwatra and Sachin Kwatra in his disclosure statement had named Ravi Shukla and Ravi Shukla in his disclosure statement had named Sanjay Parkash Tiwari. Even after being implicated in the case on the basis of disclosure statements, neither recovery of any narcotic drugs has been effected from the said 3 present petitioners, nor any incriminating evidence has been made out to show that the petitioners are linked with the alleged recovery. Petitioner Shankar has been in custody since 30.06.2022, petitioner Sachin Kwatra has been in custody since 01.07.2022 and Sanjay Parkash Tiwari has been in custody since 03.08.2022 and investigation and trial will take time.

Keeping in view the above said facts and circumstances and in view of the law laid down in ***Tofan Singh's case*** (supra), the three petitions i.e., CRM-M-36418-2022, CRM-M-36733-2022 and CRM-M-48241-2022 are allowed and the petitioners Shankar, Sachin Kwatra and Sanjay Parkash Tiwari are ordered to be released on bail on their furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to them not being required in any other case. The petitioners shall also abide by the following conditions:-

1. The petitioners will not tamper with the evidence during the trial.
2. The petitioners will not pressurize / intimidate the prosecution witness(s).
3. The petitioners will appear before the trial Court on the date fixed, unless personal presence are exempted.

4. The petitioners shall not commit an offence similar to the offence of which they are accused of, or for commission of which they are suspected.
5. The petitioners 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.

The petition i.e., CRM-M-35048-2022 is dismissed as withdrawn, at this stage.

It is made clear that in case, any act is done by the petitioners 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 petitioners.

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 cases which are only for the purpose of adjudicating the present bail petitions.

(VIKAS BAHL)
JUDGE

November 17, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No