

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-41298-2021

Date of decision : 24.03.2022

Harsh Wadhwa alias Maoo

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present : Mr.S.K.Jain, Advocate and
Mr.Akshay Jain, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of bail to the petitioner in FIR no.119 dated 14.07.2021 registered under Sections 22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Lalru, District SAS Nagar, Mohali.

Learned counsel for the petitioner has submitted that in the present case, the petitioner is not named in the FIR and the alleged recovery has been effected from two persons Ashok Kumar and Kala Ram. It has been submitted that no recovery has been effected from the petitioner and the petitioner is sought to be implicated solely on the basis of disclosure statement of Ashok Kumar. It has further been submitted that even as per the said statement of Ashok Kumar, only allegation against the petitioner is that he had paid Rs.19,000/- to Ashok Kumar to purchase intoxicant drug. It

has been submitted that thus, even as per the best case of the prosecution, the petitioner was neither the seller of the drugs, nor was found to be in possession of any drug. It has been stated that the petitioner has never been involved in any other case and the petitioner has been in custody since 20.07.2021 and the challan has already been presented and there are 18 prosecution witnesses and none of them have been examined. Learned counsel for the petitioner has further pointed out that even subsequently, recovery had been effected from the co-accused Mohammad Sajid and not from the petitioner. 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*** 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”*** and the judgment passed in ***CRM-M-12997-2020*** titled as ***“Daljit Singh Vs. State of Haryana”***, to contend that the disclosure statement made before the police is inadmissible in evidence.

Learned State counsel has opposed the present petition for regular bail and has submitted that there some phone calls were exchanged between the petitioner and said Ashok Kumar. It has been submitted that it is the petitioner, who had paid money to the extent of Rs.19,000/- to Ashok Kumar to purchase the intoxicant drugs. However, the other facts have not been disputed by learned State counsel.

Learned counsel for the petitioner, in rebuttal, has submitted that there are no details or transcript of the alleged phone call conversations in the challan and further there are no call details of 13th and 14th July, 2021, i.e. the date of incident and date of registration of the FIR. It has also been

submitted that, at any rate, the case of the prosecution is not that the petitioner was the seller of the said drugs. Reliance has also been placed by learned counsel for the petitioner upon the judgment dated 01.08.2018 passed by the Division Bench of this Court in ***CRM-A-1065-MA-2016*** titled as “***Narcotics Control Bureau vs. Sandeep***” to contend that without there being any conversation details produced on record by the prosecution in the challan, mere factor of calls exchanged between two persons cannot be made the basis to prosecute a person.

This Court has heard learned counsel for the parties and has perused the paper book.

It is not in dispute that the petitioner is not named in the FIR and no recovery has been effected from the petitioner. The recovery has been effected from one Ashok Kumar and Kala Ram and the present petitioner and Mohammad Sajid had only been subsequently implicated on the basis of disclosure statement made by said Ashok Kumar. Even subsequent to the disclosure statement of said Ashok Kumar, nothing has been recovered from the petitioner, although the recovery has been made from Mohammad Sajid. Even as per the disclosure statement of Ashok Kumar, it is not the case of the prosecution that the petitioner was the one who was selling drugs or that he had sold drugs to said Ashok Kumar or Kala Ram, rather the only allegation made was that the petitioner had paid Rs.19,000/- to the said Ashok Kumar to purchase the said drugs. With respect to the call details, it would be relevant to note that there is no transcript or conversation details in the challan and there are no call details of 13th and 14th July, 2021, i.e. date of the incident and the date of registration of the FIR, respectively.

A Division Bench of this Court in the case of Narcotics Control Bureau's (supra) has observed as under:-

“Still further, no conversation detail between accused Ramesh Kumar Patil and accused Sandeep has been produced by the prosecution. Mere call details is not sufficient to prove that Sandeep accused was also involved in the business of narcotic drugs or he had any connection with Ramesh Kumar Patil.”

A coordinate Bench of this Court in **Mewa Singh's** case (supra) had observed as under:-

“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.”

A coordinate Bench of this Court in ***Daljit Singh's*** case (*supra*)
had held as under:-

“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

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 coaccused. 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.”

The petitioner has been in custody since 20.07.2021 and there are 18 prosecution witnesses and none of them have been examined and the trial is likely to take time and the petitioner is not involved in any other case.

Keeping in view the above said facts and circumstances as well as law laid down in various judgments reproduced hereinabove, 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.

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

March 24, 2022
Davinder Kumar

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