

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(235)

CRM-M-39159-2022

Date of decision: - 15.11.2022

Rajesh Kumar alias Rajan

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. R.S. Rai, Senior Advocate
with Mr. Gautam Dutt, Advocate,
for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 439 Cr.P.C. to grant regular bail to the petitioner in FIR No.321 dated 07.07.2022, registered under Sections 22-C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Kheri Pull, District Faridabad.

2. Learned Senior counsel for the petitioner has submitted that in the present case, neither the petitioner was apprehended at the spot nor any recovery has been effected from him and the alleged recovery of 11 injections of Buprenorphine has been effected from co-accused Sonu and it is solely on the basis of disclosure statement of the said Sonu that the petitioner is sought to be implicated in the present case. It is further submitted that the investigation is complete and the challan has been

presented and other than the said disclosure statement, there is no other material against the present petitioner, thus, he deserves the concession of regular bail. In support of his arguments, learned counsel for the petitioner has placed reliance upon a 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 Co-ordinate Bench of this Court dated 17.06.2020 titled as "*Mewa Singh Vs. State of Punjab*". It is argued that even as per the said disclosure statement, it has surfaced that initially the said Sonu used to buy injections from the present petitioner, but subsequently had started purchasing from one Uttam Singh alias Tinku and the last 50 injections were purchased by said Sonu from Uttam Singh alias Tinku. It is further argued that the said Uttam Singh alias Tinku has been granted the concession of regular bail by the Additional Sessions Judge, Faridabad, vide order dated 21.10.2022 and that the case of the present petitioner is on a higher footing than that of the said Uttam Singh alias Tinku. It is stated that there are 19 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time and the petitioner is not involved in any other case.

3. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that as per the disclosure statement of said Sonu, in addition to the fact that 50 injections were purchased by Sonu from the said Uttam Singh alias Tinku, it has also been mentioned that around 25 injections were purchased from the present petitioner. The other facts, however, have not been disputed by

learned State counsel.

4. This Court has heard learned counsel for the parties and has gone through the paper-book.

5. 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.”

6. The Co-ordinate Bench of this Court in **Mewa Singh' case (supra)** has held 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 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.”*

7. In the present case, no recovery has been effected from the present petitioner. The alleged recovery of 11 injections of Buprenorphine has been effected from Sonu and the petitioner is sought to be implicated on the basis of disclosure statement of said Sonu. Even as per the disclosure statement of said Sonu, it has been stated that the last 50 injections were purchased by him from Uttam Singh @ Tinku and the said

Uttam Singh @ Tinku has already been granted the concession of regular bail by the Additional Sessions Judge, Faridabad vide order dated 21.10.2022. The case of the present petitioner is on a higher footing than that of the said Uttam Singh @ Tinku. The investigation is complete and no material other than the disclosure statement has been pointed out against the present petitioner. Moreover, there are 19 prosecution witnesses, none of whom have been examined, thus, the trial is likely to take time.

8. Keeping in view the above-said facts and circumstances as well as in view of the law laid down in the above-said judgments, the present petition is allowed and the petitioner is directed to be released on regular 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 he is 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.

9. 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.

10. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial Court would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

November 15, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No