

S.No.207

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision:06.04.2022

1. CRM-M-39657 of 2020 (O&M)

Vikrant SinghPetitioner

Vs.

State of PunjabRespondent

2. CRM-M-28448 of 2021 (O&M)

Subash Chander @ BittuPetitioner

Vs.

State of PunjabRespondent

3. CRM-M-26760 of 2021 (O&M)

Davinder SinghPetitioner

Vs.

State of PunjabRespondent

CORAM:- HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Sumer Singh Boparai, Advocate and
Mr. Sidhant Saraswat, Advocate for the
petitioner in CRM-M-39657 of 2020.

Mr. Dinesh Trehan, Advocate for the petitioner
in CRM-M-28448 of 2021.

Mr. Varinder Basa, Advocate for the petitioner
in CRM-M-26760 of 2021.

Mr. Sarabjit Singh Cheema, AAG, Punjab

VIKAS BAHL, J. (ORAL)

The present order will dispose of three criminal miscellaneous
applications filed under Section 439 Cr.P.C for grant of regular bail in FIR

No.160 dated 18.09.2020 registered under Sections 21 and 22/ 22-61-85 of

Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Division No.1, District Pathankot.

The first Criminal Misc. Application CRM-M-39657 of 2020 is filed by Vikrant Singh. The second CRM-M-28448 of 2021 is filed by Subash Chander @ Bittu. The third application CRM-M-26760 of 2021 is filed by Davinder Singh.

Learned counsel for the parties have jointly stated that CRM-M-39657 of 2020 may be taken as the lead case. Thus, the facts are being taken for consideration from the said case.

Learned counsel for the petitioners have relied upon the judgment passed by the Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu**, reported as **2021(1) RCR (Criminal) 1**, and order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled **"Mewa Singh Vs. State of Punjab"**, to contend that the statement made before the Police is inadmissible in evidence.

Learned counsel for the petitioners have submitted that in the present case, no recovery has been made from the petitioners. It is submitted that the alleged recovery has been made from two persons i.e. Rakesh Sharma and Ravdeep Singh @ Sheru. It is further submitted that the petitioners have been implicated solely on the basis of the disclosure statement of both the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and has submitted that even subsequent to the disclosure statement, no recovery has been effected from the petitioners. It is further submitted that the petitioners are not involved in any other case and they are in custody since 06.11.2020 (Vikrant Singh), 05.12.2020 (Subash Chander)

and 23.04.2021 (Davinder Singh) and in the present case, investigation is complete and the challan has been presented. There are 32 witnesses, out of which, one witness has been partially examined and, thus, the trial is likely to take time.

Learned State Counsel, on the other hand, has opposed the present petition for regular bail and has submitted that there are call details of conversations exchanged between the three petitioners and the two co-accused Rakesh Sharma and Ravdeep Singh alias Sheru, from whom the recovery has been effected.

Learned Counsel for the petitioners, in rebuttal have submitted that as per the affidavit and report under Section 173 Cr.P.C., there are no details as to on what date, the alleged calls had been exchanged and at any rate, there is no transcript of the said call details and have relied upon the judgment of the Division Bench in **CRM-A-1065-MA of 2016 – Narcotics Control Bureau Vs. Sandeep**, decided on 01.08.2018 as well as the judgment of the Gujarat High Court reported in **Yash Jayeshbhai Champaklal Shah Vs. State of Gujarat, 2022 SCC Online Guj 271**, to contend that where there are no recordings of conversations exchanged between the accused, then the same cannot be treated as corroborative material in absence of substantive material found against the accused. Reliance has also been placed on judgment of the Hon'ble Supreme Court in **Bharat Chaudhary Vs. Union of India – 2021 SCC Online SC 1235**, to argue that reliance placed on Whatsapp messages cannot be treated as sufficient material to establish a live link between the accused in the case when most of the scientific reports with respect to the said evidence are still awaited.

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

It is not in dispute that the petitioners have not been named in the FIR. No recovery has been effected from the petitioners and the alleged recovery has been effected from two co-accused Rakesh Sharma and Ravdeep Singh alias Sheru. The petitioners are sought to be implicated solely on the basis of the disclosure statement made by the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and even after the petitioners were arrayed as accused in pursuance of the disclosure statements, no recovery had been made from the petitioners.

The petitioners have been in custody since 06.11.2020 (Vikrant Singh), 05.12.2020 (Subash Chander) and 23.04.2021 (Davinder Singh) and challan in the present case has already been presented and there are 32 witnesses, out of whom only one has been examined and thus, the trial is likely to take time on account of Covid-19 Pandemic. The petitioners are not involved in any other case. With respect to the call details, suffice to say that no dates on which the said calls had been allegedly made by the co-accused, Rakesh Sharma and Ravdeep Singh alias Sheru to the petitioners or vice-versa have been mentioned in the affidavit or in the report under Section 173 Cr.P.C. Moreover, even the transcript of the said conversations are not a part of the record under Section 173 Cr.P.C. A Division Bench of this Court in Narcotics Control Bureau's case (supra), was pleased to observe 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 connected with Ramesh Kumar Patil.

In view of the above, no case is made out for grant of leave to appeal against the acquittal of Sandeep accused.”

In judgment of the Gujarat High Court in **Yash Jayeshbhai Champaklal Shah's case (supra)**, it has been observed as under:-

“Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused.”

A perusal of the above judgment would show that without the transcript of the conversations exchanged between the co-accused, mere call details would not be considered to be corroborative material in absence of substantive material found against the accused. In the present case, there is no other material against the petitioners.

Keeping in view the above-said facts and circumstances, as well as law laid down in the judgments noticed hereinabove, the present petitions are allowed and the petitioners 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 their not being required in any other case.

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 case which are only for the purpose of adjudicating the present bail application.

All the pending applications, if any, stand disposed of.

April 06, 2022	(VIKAS BAHL)
renu	JUDGE
Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No