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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43396-2022 (O&M)

Date of Decision: 20.12.2022

Surinder Singh @ Sonu

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ashish Bakshi, Advocate, for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 220 dated 26.12.2017, under Sections 18/61/85 of NDPS Act (Section 29 of NDPS Act and Section 473 IPC added later on), registered at Police Station Dehlon, Ludhiana.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody for about 8 months. He submitted that it is a case where an FIR was lodged on the basis of apprehension of three co-accused namely, Santosh Kumar, Ravi Kumar and Davinder Singh @ Bunty from whom there was a recovery of 1 kg. of opium by way of a chance recovery. He submitted that the present petitioner is the brother-in-law of the co-accused Davinder Singh @ Bunty and no recovery has been effected

from the petitioner and disclosure statement of a co-accused is not admissible in evidence per se in view of the law laid down by the Hon'ble Supreme Court in *Tofan Singh V/s. State of Tamil Nadu [2021 (1) RCR (Criminal) 1]*. He submitted that no other sufficient material is available with the prosecution to connect the petitioner with the offence except for the disclosure statement. He submitted that the petitioner was earlier granted bail by the learned trial Court and he had been regularly appearing before the Court but thereafter there was a miscommunication by his counsel to the petitioner that an exemption application would be filed for the purpose of seeking exemption on the ground that the father of the petitioner was not keeping good health and was suffering from multiple ailments and it was because of that miscommunication from the counsel that he could not appear and ultimately he was declared as a proclaimed offender on 16.09.2019. He further submitted that thereafter he had filed a petition before this Court challenging the order of declaring the petitioner as a proclaimed offender in which the petitioner had stated that he was ready to surrender before the learned trial Court and file application for regular bail but again there was no communication from his counsel and consequently, counsel for the petitioner had made a statement before this Court that he could not get instructions from the petitioner and it was because of that reason that the petition was dismissed by this Court on 13.05.2022 in CRM-M-53213-2021. He submitted that after inquiring the position from the counsel he immediately filed an application before the learned trial Court for surrendering and rather after a period of only 15 days i.e. on 28.05.2022 his application for surrendering was allowed by the trial Court

and he was taken into custody. He submitted that the bona fide of the petitioner could not be doubted in view of the aforesaid facts and circumstances since immediately on the dismissal of the aforesaid petition, he moved an application for surrender and thereafter, he had surrendered before the learned trial Court.

Learned counsel has submitted that even otherwise also the petitioner is not a habitual offender and he is involved in only one case under Section 420 IPC and there is no other case against him under the NDPS Act. He submitted that apart from the above, the charges in the present case were framed on 16.09.2019 and it is about 3 years and 3 months that even a single witness has not been examined by the prosecution, although trial against the other co-accused is proceeding which shows that the petitioner has been falsely implicated in the present case. He further submitted that the mere fact that the earlier petitioner was declared as a proclaimed offender but thereafter he has surrendered on his own cannot disentitle the petitioner for grant of regular bail and it would not mean that the petitioner should be kept in custody for indefinite period especially in view of the fact that for more than 3 years after the framing of the charges not even a single witness has been examined.

On the other hand, Mr. Kunal Vinayak, learned Assistant Advocate General, Punjab while referring to the affidavit filed by the State submitted that it is correct that the petitioner has faced incarceration for about 8 months. He has also submitted that it is correct that on the application filed by the petitioner, he had surrendered on 28.05.2022 and from thereafter as well he is in custody. He further submitted that it is also

correct that no recovery was effected from the petitioner either from the spot where the other three co-accused were apprehended and even thereafter as well and that the name of the petitioner has been nominated on the basis of disclosure statement of a co-accused.

On a query being raised to the learned State counsel as to whether there was any sufficient material available with the police to connect the petitioner with the recovery from the other three co-accused apart from the disclosure statement of a co-accused, he after seeking instructions from HC Gurmeet Singh who is present in the Court stated that no such material was available in this regard. He has however opposed the grant of regular bail to the petitioner on the ground that earlier he was declared as a proclaimed offender and there are chances that he may abscond again.

I have heard the learned counsel for the parties.

It is a case where the name of the petitioner was nominated only on the basis of disclosure statement of a co-accused. As per the learned State counsel or even as per reply, no sufficient material is available with the police to connect the petitioner with the present offence except for the disclosure statement of a co-accused. It is a settled law that the disclosure statement of a co-accused is not admissible in evidence per se unless there is any other link evidence in this regard but nothing has come up either in the arguments raised by the learned State counsel or in the affidavit filed by State with regard to the same and therefore, the case of the prosecution stands only on the strength of disclosure statement of one of the co-accused who is stated to be the brother-in-law of the petitioner.

The charges in the present case are stated to have been framed by the learned Judge, Special Court on 16.09.2019 which is more than three years but as per the learned counsel for the parties, not even a single witness has been examined. This also shows the conduct of the prosecution as to what was preventing them from deposing before the Court and therefore, this Court would certainly draw an adverse inference against the prosecution in this regard especially keeping in view the judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]***. Para 40 of the aforesaid is reproduced as under:-

“40. Sub-section (1) mandates courts to continue the proceedings on a day-to-day basis till the completion of the evidence. Therefore, once a trial starts, it should reach the logical end. Various directions have been issued by this Court not to give unnecessary adjournments resulting in the witnesses being won over. However, the non-compliance of [Section 309](#) continues with gay abandon. Perhaps courts alone cannot be faulted as there are multiple reasons that lead to such adjournments. Though the section makes adjournments and that too not for a longer time period as an exception, they become the norm. We are touching upon this provision only to show that any delay on the part of the court or the prosecution would certainly violate [Article 21](#). This is more so when the accused person is under incarceration. This provision must be applied inuring to the benefit of the accused while considering the application for bail. Whatever may be the nature of the offence, a prolonged trial, appeal or a revision against an accused or a convict under custody or incarceration, would be violative of [Article 21](#). While the courts will have to endeavour to complete at least the recording of the evidence of the private witnesses, as indicated by this Court on quite a few occasions, they shall make sure that the accused does not suffer for the delay occasioned due to no fault of his own”.

So far as the objection raised by the learned State counsel that the petitioner was earlier declared as a proclaimed offender and therefore, he is not entitled for the grant of regular bail is concerned, the factual position in the aforesaid case would show that earlier the petitioner was granted bail by the learned trial Court but thereafter he had absented himself and was declared as a proclaimed offender in the year 2019. An explanation has been given by the learned counsel for the petitioner that the reason for the same was miscommunication with the counsel that exemption application had been filed and the petitioner could not appear also because of the multiple ailments of his age old father. Be that as it may, the petitioner had chosen to file a petition before this Court seeking quashing of the order by which he was declared as a proclaimed offender in which he had undertaken to surrender but again due to miscommunication with the counsel the said petition was dismissed on 13.05.2022 only on the ground that the learned counsel for the petitioner was not able to get instructions from his client. Thereafter, immediately the petitioner filed application before the learned trial Court for surrender and in 15 days time he himself surrendered before the learned trial Court by filing an application and therefore, he is in custody. There is no occasion for this Court to presume any lack of bona fide on the part of the petitioner. The totality of the facts and circumstances with regard to the present offence and the role of the petitioner would suggest that a mere fact that the petitioner was declared as a proclaimed offender and thereafter, he surrendered cannot disentitle the petitioner for being considered for grant of regular bail because an accused cannot be deprived of his freedom only on the ground that earlier he was

declared as a proclaimed offender and he had surrendered because no accused can be kept in custody for indefinite period. Apart from the above, it is very surprising to note that for more than three years after the framing of charges no prosecution witness has been examined and therefore, this Court would certainly draw an adverse inference against the prosecution in this regard. In addition to the above, the petitioner was nominated on the basis of disclosure statement of a co-accused which is not admissible in evidence per se in view of the law laid down by the Hon'ble Supreme Court in *Tofan Singh V/s. State of Tamil Nadu (Supra)* and even as per the learned State counsel, there is no other material available to connect the petitioner with the present offence apart from disclosure statement. The alleged recovery from the co-accused was also of 1 Kgs. of opium which does not fall in the category of commercial quantity and the petitioner is not a habitual offender.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

20.12.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No