

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

223

CRM-M-42960-2022  
Decided on :13.12.2022

Sukhwinder Singh

... Petitioner

Versus

State of Punjab

... Respondent

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

PRESENT: Mr. Aayush Goyal, Advocate  
for the petitioner.

Mr. Ramandeep Partap Singh, Sr. DAG, Punjab.

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**VIKAS BAHL, J. (Oral)**

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case FIR No. 238 dated 23.10.2019 under Sections 22, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Raman, District Bathinda.

Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and no recovery has been effected from him and the alleged recovery has been effected from the co-accused Gurjit Singh and Sukhpal Singh and the FIR was registered on 23.10.2019 whereas the petitioner has been implicated on the basis of the disclosure statement made by Gurjit Singh and the DDR regarding the same had been entered into on 07.11.2019. It is submitted that other than the disclosure statement, there is no other material to connect the present petitioner with the alleged recovery. It is further submitted that

even in the disclosure statement, the name of one Gurtej Singh @ Gulla was mentioned and it is only subsequently that it was the case of the prosecution that the said Gurtej Singh @ Gulla is the present petitioner. It is contended that even after the petitioner has been implicated in the case , no recovery has been effected from him and the petitioner is in custody since 25.04.2022 and the investigation is complete and the challan has been presented and and there are as many as 13 prosecution witnesses out of whom, none have been examined and thus, the trial is likely to take time. Learned counsel for the petitioner has placed reliance 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*, to contend that the disclosure statement made before the police is inadmissible in evidence.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is also involved in two other cases and the recovery in the present case from the co-accused is of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply.

Learned counsel for the petitioner, in rebuttal, has submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as

***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others 2012 (2)***

SCC 382 reference has been made to the relevant portion of paragraph 6 which 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 petitioner was not named in the FIR and no recovery was effected from him and he has been implicated on the basis of disclosure statement of co-accused Gurjit Singh and even after the said disclosure statement, no recovery has been effected from the present petitioner and there are no call details between the petitioner and the co-accused or any other incriminating evidence linking the present petitioner with the co-accused from whom the

recovery has been effected.

Keeping in view the above said facts and circumstances and also in view of the law laid down in the above said judgments, 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. 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.

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.

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

13.12.2022  
*Mehak*

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|----------------------------|--------|
| Whether reasoned/speaking? | Yes/No |
| Whether reportable?        | Yes/No |