

107+210 (2 cases)

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

Date of decision : 08.12.2022

CRM-M-45243-2022 (O&M)

Mohd. Hussain

....Petitioner

Versus

State of Haryana

...Respondent

CRM-M-45330-2022

Vijay Kumar

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Parminder Singh, Advocate
for the petitioner(s).

Mr. Ashish Yadav, Addl. A.G., Haryana
for the respondent-State.

PANKAJ JAIN, J. (ORAL)

**CRM-47472-2022 in
CRM-M-45243-2022**

This is an application for placing on record disclosure statements made by main accused Shankar both dated 6th of July, 2022, marked as Annexures P-4 and P-5.

For the reasons recorded in the application, the same is allowed. Documents marked as Annexure P-4 and P-5 are taken on record subject to all just exceptions.

**CRM-M-45243-2022 and
CRM-M-45330-2022**

This order shall dispose off afore-captioned two petitions filed

under Section 439 Cr.P.C. for grant of regular bail to the petitioners in case F.I.R. No.505 dated 5th of July, 2022 registered for the offences punishable under Sections 22C, 29 of Narcotic Drugs and Psychotropic Substance Act No.61 of 1985 (for short, 'the NDPS Act') at Police Station Old Industrial, Panipat (Haryana).

2. Since both these petitions arise out of the same very FIR, for convenience the facts are being culled out from CRM-M No.45243 of 2022.

3. As per the case of the prosecution it has been alleged that :-

“.....Today on 05.07.2022, the undersigned A.S.I. Haryana State Narcotic Control Bureau, Ambala alongwith EASI Mahboob Ali 524/YNR alongwith ESI Gulzar 604/YNR, HC Sandeep Kumar No.293/FBD, Constable Sanjeev Kumar No.384/KNL on government vehicle no.HR30R4457 make Bolero being driven by Constable Ajit Singh No.148/SPT, in search of intoxicant substance, departed from Yamunanagar and have reached at Hari Bagh Colony Panipat. At about 4.00 PM special secret informer met and gave information that Shankar son of Vilayati resident of Hari Bagh Colony Panipat is doing business of selling intoxicant drugs and today also after taking intoxicant drugs from his house, he is about to come to Hari Bagh Colony Panipat to sell the same. That after informing the appearance of the accused and house, special secret informer went away from the spot. That the secret information being reliable, the companions were informed about the secret information and the undersigned ASI took the police party and went towards the house of Shankar in the street then after walking for some distance, one young man, long hair and wearing black color lower was seen coming from front side, after seeing the police party he started walking behind then with the help of the companions the

undersigned ASI apprehended the accused person then the accused person disclosed his name Shankar son of Vilayati Ram resident of Hari Bagh Colony. The undersigned ASI also aware Shankar about his name, designation and place of posting and prepared notice U/s 42 NDPS and sent it through Sanjeev Kumar No.384/KNL before Shri Om Parkash, Deputy Superintendent of Police, Crime Against Women, Panipat. After that I informed Shankar through notice U/s 50 N.D.P.S. Act that I have doubt about you having intoxicant drug with you, hence, your search is necessary to be conducted. You have legal right that you can get yourself search in the presence of some Gazetted Officer and Magistrate. Shankar and witnesses put their respective signatures on the notice U/s 50 NDPS Act. Then I made telephonic call from mobile no.8950233999 to mobile number 9416157367 of Duty Magistrate Shri Rajender Parsad, Mining Engineer Panipat and requested to come on the spot. After some time Shri Rajender Parsad, Mining Engineer came to the spot and aware Shankar about his designation and place of posting. Then after some time, the above said Shankar after thinking and understanding, informed that I want to get myself search in front of some Gazetted Officer Consent notice under section 50 NDPS Act was prepared separately. Then I aware Duty Magistrate Shri Rajender Parsad about the situation. That Duty Magistrate Shri Rajender Parsad, accused and the witnesses put their respective signatures on the consent notice U/s 50 NDPS Act. After that Duty Magistrate searched out the undersigned ASI with regard to intoxicant drugs. During the search, no type of intoxicant drug was recovered from the undersigned ASI. Memo of search and recovery was prepared. Shankar and the witnesses and I put our respective signatures on the memo. Thereafter, Duty Magistrate asked the undersigned A.S.I to search the cloths worn by above said Shankar. I, as per order of Duty Magistrate, searched black color lower of Shankar from left pocket of it, three packets total 13 injections

BUPRENORPHINE INJECTION IP LEEGESIC 2 ML. were recovered, that in the presence of Duty Magistrate Shri Rajender Parsad Mining Engineer, Panipat, batch number of the injection was checked then 8 injections of Batch No.1L22001 and MFG date 02/2022 and Exp Date 01/2024 and 5 injection of batch no.1L22002 and MFG Date 02/2022 and Exp Date 01/2024 total 13 injections were recovered. That I made telephonic call on mobile number 9017391105 of Drugs Inspector Sandeep Huda, Panipat and informed him about the situation and requested to come on the spot. That Drugs Inspector Sandeep Huda, Panipat informed that I have gone to Rohtak due to some work, you send me the photo of the injection through whatsapp, I will inform you after seeing the photo. That I clicked the photo of recovered injections and sent it to Drugs Inspector Sandeep Huda Panipat through whatsapp. That the Drugs Inspector Sandeep Huda Panipat informed about offence under NDPS Act and stated that I will give written opinion to you after coming from Rohtak. That I put the recovered injections in a cardboard box and prepared parcel and sealed the parcel with two seals of SK and put two seal of SK cloth on sample seal and Duty Magistrate Shri Rajender Parsad, Mining Engineer, Panipat sealed the parcel with his seal SS and put two seals on sample seal and the Magistrate after using the seal kept it with him. I separately prepared the list of parcel containing injection and took the parcel into police custody vide memo. The Magistrate, accused and the witnesses put their respective signatures on the memo. That the usage, seal was handed over to ESI Mahbob Ali no.524/YNR by me. That the above said Shankar by keeping the prohibited intoxicant injections in his custody without licence and permit has committed offence under section 22-C NDPS Act...”

4. After Shankar was apprehended and recovery of 13 ampules of

Buprenorphine injections IP Leegesic 2 ml. each was made. He suffered two disclosures even dated i.e. 6th of July, 2022. In the second disclosure he named Mohd. Hussain, petitioner (in CRM-M-45243-2022) to be source of said contraband. Mohd. Hussain is further stated to have nominated Vijay Kumar, petitioner (in CRM-M-45330 of 2022). Counsel for the petitioner(s) further contends that apart from the disclosure so suffered by the Shankar as also Mohd. Hussain being weak evidence and not admissible in terms of law laid down in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1**, false implication of the petitioner(s) is evident from the records of the case. The investigating agency has tried to go over the board to implicate the petitioner. Mohd. Hussain was taken into custody on 7th of July, 2022 and the rent agreement which has been made part of report under Section 173(2) Cr.P.C. to show the possession of petitioner-Mohd. Hussain as tenant in the shop is dated 3rd of August, 2022 for the period commencing from 1st of December, 2021 upto 31st of October, 2022.

5. Ld. Counsel for the petitioner(s) has further drawn attention of the Court to two disclosure statements alleged to have been made by Shankar placed on record as Annexures P-4 and P-5 to point out various infirmities including difference in the signatures of H.C. Sandeep Kumar 293/FBD HSNCB Unit Ambala, who is stated to be the witness to such disclosure statement. He further submits that the challan already stands presented. Almost all the witnesses are official witnesses and, thus, there

can't be any apprehension that the petitioners shall tamper with evidence.

Thus, he prays that the petitioners be granted concession of regular bail.

6. Per contra, Ld. State Counsel submits that possession of petitioner-Mohd. Hussain over the shop has been corroborated by the landlord who has been joined in the investigation. However, he does not dispute the fact that in terms of law laid down in **Tofan Singh's** case it will be highly debatable as to whether the disclosure suffered by Shankar would be enough to drive-home offence against the petitioner.

7. Having heard counsel for the parties and after going through the records of the case, in the considered opinion of this Court keeping in view the incarceration already suffered by the petitioners and in view of the law laid down by Apex Court in **Tofan Singh's** case (supra) to the following effect that :-

“**158.2.** That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.”

the present petitions are allowed. The petitioners are ordered to be released on bail on their furnishing bail/surety bonds subject to the satisfaction of the Ld. Trial Court/Duty Magistrate concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioners shall remain bound by the following conditions :-

(i) The petitioners shall not mis-use the liberty granted.

- (ii) The petitioners shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioners shall not absent themselves on any date before the trial.
- (iv) The petitioners shall not commit any offence similar to the one alleged in the present case.
- (v) The petitioners shall deposit their passports, if any with the trial Court.
- (vi) The petitioners shall give their cellphone numbers to the police authorities and shall not change their cellphone numbers without permission of the trial Court.
- (vii) The petitioners shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioners.

9. Needless to say that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

10. A copy of this order be kept on the file of other connected case.

December 08, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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