

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-48504-2022

Date of decision : 07.12.2022

Iqbal Singh @ Happy

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sandeep Kumar Passi, Advocate
for the petitioner.

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

VIKAS BAHL, J.(ORAL)

This is the second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.31 dated 13.04.2022 registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) (Section 29 of the NDPS Act added later on) at Police Station Sadiq, District Faridkot.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 26.06.2022 and the investigation is complete and the challan has already been presented and there are 19 witnesses, out of which, none have been examined and thus, the trial is likely to take time. It is submitted that the petitioner earlier filed a petition seeking bail which was dismissed as withdrawn on 16.08.2022 since the challan had not been presented and liberty was granted to file a fresh petition after the report under Section 173 Cr.P.C. had been filed. It is

the petitioner has been sought to be implicated on the basis of disclosure statement of the co-accused Bakshish Singh from whom the recovery of intoxicant tablets has been effected. It is stated that neither there is any incriminating material against the present petitioner nor there are any call details nor there is any link evidence to connect the petitioner with the co-accused from whom recovery had been effected. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in case titled as ***“Tofan Singh vs. State of Tamil Nadu”*** reported as ***2021(4) SCC 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 recovery from the co-accused is of commercial quantity and thus, bar under Section 37 of the NDPS Act would apply. It is further submitted that the petitioner is involved in other cases. The other facts have, however, not been disputed.

Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. The relevant portion of the said judgment 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 has been implicated on the basis of disclosure statement of co-accused Bakshish 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 they are 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

December 07, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No