

206

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

CRM-M-6002-2023

Date of decision : 20.04.2023

Raju Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Manpreet Ghuman, Advocate for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab.

VIKAS BAHL, J. (ORAL)

1. This is the third petition filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.211 dated 16.07.2019 registered under Sections 22, 29, 61 and 85 of the NDPS Act, 1985, at Police Station Bhawanigarh District Sangrur.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 7 months and 8 days and there are 26 prosecution witnesses, out of which, three prosecution witnesses have been examined and thus, the conclusion of trial is likely to take time. It is further submitted that the second bail application filed by the petitioner was dismissed as withdrawn on 05.01.2023 with liberty to the petitioner to file a fresh petition after giving full and better particulars and thus, in effect, the

present petition is the second regular bail application. It is contended that the first bail application of the petitioner was dismissed as withdrawn on 24.08.2022 at that stage and subsequent to the same, sufficient time has elapsed so as to entitle the present petitioner to file the present regular bail application. It is further contended that the petitioner was not named in the FIR and the secret information, in the present case, was received against Satgur @ Satnam, who was apprehended and recovery of 800 tablets of Clovidol SR100 and 100 tablets of Alprax were effected from him. It is argued that the said Satgur in his disclosure statement, had implicated Harbans and Jailo and subsequent recoveries have been effected from Harbans and Jailo and it was Jailo who had implicated the present petitioner in her disclosure statement but no recovery has been effected from the present petitioner. It is further argued that even as per the affidavit filed by the State and as per the challan, there is no incriminating evidence against the present petitioner other than the disclosure statement of co-accused Jailo. Learned counsel for the petitioner has 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*, to contend that the disclosure statement made before the police is inadmissible in evidence.

3. On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the recoveries effected from the co-accused of the petitioner are of commercial quantity and thus, the bar under Section 37 of the NDPS Act would apply. It is further submitted that Jailo, in her disclosure statement, has stated that it is the petitioner who had supplied the narcotic tablets. It is

contended that the petitioner is involved in other cases also under the NDPS Act and thus, is a habitual offender. It is also stated that the petitioner was declared proclaimed offender on 18.11.2019 and was arrested on 19.04.2021.

4. Learned counsel for the petitioner, in rebuttal to the abovesaid arguments, has submitted that since the petitioner was not named in the FIR thus, was not aware about the said proceedings. It is further submitted that the petitioner has been granted bail in all the other cases and 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 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.”

5. This Court has heard learned counsel for the parties and has perused the paper book.

6. 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.”

7. The petitioner was not named in the FIR and no recovery has been effected from the present petitioner and the petitioner is sought to be implicated on the basis of disclosure statement of Jailor. Even after the petitioner was named by said Jailor, no recovery has been effected from the present petitioner and there are no details of calls between the petitioner and co-accused from whom the recovery has been effected. No incriminating evidence against the petitioner other than the disclosure statement of Jailor has been referred to in the affidavit filed by Mohit Aggarwal, PPS, Deputy Superintendent of Police, Sub Division Bhawanigarh, District Sangrur. The secret information was against Satgur @ Satnam who had further named Harbans and Jailor and not the present petitioner and it is Jailor who had named the present petitioner.

8. Keeping in view the abovesaid facts and circumstances and also in view of law laid down in the above said judgments, the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case. The petitioner shall also abide by the following conditions:-

- i). The petitioner will not tamper with the evidence during the trial.

- ii). The petitioner will not pressurize/intimidate the prosecution witness(s).
- iii). The petitioner will appear before the trial Court on the date fixed, unless personal presence is exempted.
- iv). The petitioner shall not commit an offence similar to the offence of which he is accused, or for commission of which he is suspected.
- v). 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/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

9. 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.

10. Nothing stated above shall be construed as an 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.

20.04.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No