

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

(207)

CRM-M-5295-2022

Date of decision: - 27.04.2023

**Kuldeep****....Petitioner****Versus****State of Haryana****.....Respondent****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Parminder Singh Sekhon, Advocate,  
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

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

1. This is a second petition filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in FIR No.72 dated 18.05.2021, registered under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985; Section 25 of the Arms Act, 1959 and Sections 395, 427, 216 and 34 IPC, at Police Station Satnali, District Mahendergarh (District Narnaul).

2. Learned counsel for the petitioner has submitted that the petitioner has been in custody since 08.06.2021 and out of total 28 prosecution witnesses, only one has been examined, thus, the trial is likely to take time. It is further submitted that the previous bail application of the petitioner was withdrawn on 10.12.2021 with liberty to file a fresh petition after annexing all the relevant documents including

the disclosure statement of Naveen and thus, in effect the present petition is the first bail application filed by the petitioner. It is further submitted that the petitioner has neither been named in the FIR, nor any recovery has been effected from him, nor he was apprehended at the spot, nor he was the owner or the driver of the Canter from which the *ganja* has been recovered. It is also submitted that the case of the petitioner is on a similar footing as that of co-accused, namely, Mandeep @ Lakhmi, who has already been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 28.03.2023 passed in CRM-M-22840-2022.

3. Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court of India in case titled as “*State by (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & another*”, along with other connected matters, *reported as 2022(1) R.C.R. (Criminal) 762* and has submitted that the case of the petitioner is on a better footing than the case of the petitioner in the said case and the order of granting bail was upheld by the Hon'ble Supreme Court.

4. Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that during the course of investigation, co-accused Ravi Kumar son of Raj Kapoor was arrested in this case on 22.05.2021 and during investigation, the said Ravi Kumar had suffered a disclosure statement, wherein, he had admitted that his involvement in the present crime and had stated that he had loaded the *ganja patti* in Canter No.HD -61D-7282 from Andhra Pardesh to Haryana and the same was handed over to the present petitioner and that the said

*ganja patti* was to be delivered in the area of Satnali and in the meantime unknown persons had stopped the Canter by firing at it and parking their vehicle in front of the Canter and took away some bags of *ganja patti* in a pickup vehicle. It is argued that the present petitioner was arrested on 08.06.2021 and he had also suffered a disclosure statement as per which, he alongwith other co-accused, had gone to Odisha and had met one Pardeep and a deal with respect to the purchase of *ganja* was finalized and Rs.1,00,000/- was given to Pardeep Sharma in cash. It is stated that as per the said disclosure statement of the petitioner, he was sitting in the Canter bearing registration No.HR-61D-7282 and on seeing the police vehicle which had come from the front, the petitioner jumped from the moving Canter out of fear of the police and fled from the spot. It is also submitted that there are details of phone calls between Pardeep Sharma & the present petitioner as well as other co-accused. It is stated that since in the present case, the petitioner is the one who struck the original deal and had a significant role to play in the crime in question and therefore, does not deserve the concession of regular bail.

5. This Court has heard learned counsel for the parties and gone through the paper-book.

6. The Hon'ble Supreme Court of India in **State by (NCB) Bengaluru case (supra)**, has held as under: -

“xxx xxx xxx xxx xxx xxx xxx xxx xxx

*Similarly, Mohammed Afzal[A-6], respondent in SLP (Crl.) No. 1454/2021 was arrested on an allegation that his Call details record (CDR) revealed that he was in constant conversation with A-2 and one Abu Thahir @ Abdu [A-5]. Additionally, reliance was placed by the Department on the statement of A-5 recorded under Section 67 of the*

*NDPS Act which purportedly revealed that both of them had arranged the drugs that were delivered to A-1 and A-2 on 22nd March 2019, who were going to carry the same in their luggage while flying to Doha. 3. Munees Kavil Paramabath [A-8], respondent in SLP (Crl.) No. 1454/2021 was purportedly found to be in conversation with A-2, A-6, A-7 and A-8 as per the CDR of A-5 on the date of the seizure. The petitioner-NCB claims that apart from the statement of A-5 recorded under Section 67 of the NDPS Act, he had also voluntarily stated during his examination that he was paid money by A-8 for financing the drugs. Abu Thahir @ Abdu [A-5] and Sabir Bayan [A-7], respondents in SP (Crl.) No. 1773-1774/2021 were similarly arrested on the statement of the co-accused, namely, A-2, A-6 and A-8 and on an allegation that flight tickets of A-1 were recovered from the house of A-5 and A-6.*

xxx    xxx    xxx    xxx    xxx    xxx    xxx    xxx    xxx

*6. As for Munees Kavil [A-5], respondent in Criminal Petition No. 7897/2019 who was granted bail vide order dated 20th January, 2020 in the second case registered by the NCB, the basis for arresting him was the statement made against him by the co-accused, A-1 under Section 67 of the NDPS Act disclosing therein that A-5 had sent drugs to Doha on several previous occasions on instructions received from his brother and that he was financing the drug business.*

*7. Mr. S.V. Raju and Mr. K. M. Nataraj, learned Additional Solicitors General both appearing for the petitioner-NCB in the connected petitions have challenged the impugned orders primarily on the ground that the High Court has erred in returning a finding that the rigors of Section 37 of the NDPS Act are not attracted to the facts of the present cases; that none of the pre-conditions stipulated in Section 37 of the NDPS Act that starts with a non-obstante clause, had been met in the instant cases for granting any relief to the respondents and that a concession has been granted to the respondents on an erroneous presumption that there is a reasonable ground for believing that they are not guilty for such an offence. It has been vehemently argued by the learned Additional Solicitors General that in the instant cases, there existed justifiable reasons to reject the bail applications of the respondents and there was hardly any ground to believe that they were not guilty of the offences alleged against them or that they are*

*not likely to commit any such offence while on bail. 8. Vide order dated 05th January, 2020, learned counsel for the petitioners NCB were directed to prepare a comprehensive tabulated statement with respect to the role attributed to each of the respondents, the evidence gathered against them at the time of their arrest, their antecedents, the dates on which they were arrested and the period of custody undergone by them, for ready reference. The said tabulated statement has been filed and a perusal thereof reveals that in SLP (Crl.) @ Diary No.22702/2020, SLP (Crl.) No.1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) Nos. 1773-1774/2021, SLP (Crl.) No. 2080/2021, heavy reliance has been placed by the petitioner-NCB on the voluntary statements of the accused and the co-accused recorded under Section 67 of the NDPS Act for arresting them. Another piece of evidence referred to is the CDR details in respect of A-3, A-4, A-5, A-6 and A-8 in the first case which as per the prosecution, goes to show that the said respondents were constantly in touch with each other and with A-1 and A-2 on the date of the seizure. The attention of this Court was also drawn to the fact that the antecedents of A-5, A-6 and A-8 in the first case and A-2 and A-5 in the second case are not clean.*

*9. Having gone through the records alongwith the tabulated statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act.*

*10. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu<sup>6</sup>, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary*

*statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”*

A perusal of the above judgment would show that in the said case, there were allegations against the accused more specifically, against accused Nos.5, 6 and 8 to the effect that it had come forth from details of the call record that there were conversations between the said persons and the main accused, from whom seizure of commercial quantity of drugs had been effected. There were also statements made by the said accused under Section 67 of the NDPS Act disclosing therein that the accused therein, more so, accused No.5 had sent drugs to Doha on multiple occasions earlier on instructions received from his brother and that he was financing the drug business and further to the extent that he had been paid money by accused No.8 for financing the drugs. It was also observed that said accused Nos.5, 6 and 8 did not have clean antecedents. The Hon'ble Supreme Court after considering the judgment in case titled as “**Tofan Singh Vs. State of Tamil Nadu**”, ***reported as 2021(4) SCC 1***, had observed that that the confessional statement recorded under Section 67

of the NDPS Act would be inadmissible in the trial of an offence under the NDPS Act and thus, the arrests made on the basis of the confession/voluntary statements of the accused therein, could not be the basis for overturning the impugned orders releasing them on bail. Even with respect to the CDR and the allegations of tampering of evidence levelled against the accused, it was observed that the same would be considered at the time of trial and thus, the order granting bail to the said accused was upheld. However, the order granting bail to one of the accused i.e., accused No.2 was set aside inasmuch as, there was recovery of substantial commercial quantity of drugs from the rented accommodation occupied by him.

7. The facts of the above-said case are similar to the facts of the present case. The petitioner has neither been named in the FIR, nor was apprehended at the spot, nor any recovery has been effected from him, nor was stated to be the owner or driver of the Canter in which, the *ganja patti* was being transported. The material pointed out by the State counsel against the present petitioner is primarily the disclosure statement of the co-accused recorded under Section 67 of the NDPS Act and the disclosure statement of the present petitioner and the details of call record inter se between the present petitioner and other co-accused. It has been held in the above-said judgment that the disclosure statement/confessional statement recorded under Section 67 of the NDPS Act would be inadmissible in a trial of an offence under the NDPS Act.

8. Moreover, the present petitioner is in custody since 08.06.2021 and out of total 28 prosecution witnesses, only one has been

examined, thus, the trial is likely to take time. The co-accused of the petitioner, namely, Mandeep @ Lakhmi, who is similarly placed as the present petitioner, has already been granted the concession of regular bail by a Co-ordinate Bench of this Court, vide order dated 28.03.2023 passed in CRM-M-22840-2022.

9. Keeping in view the abovesaid facts and circumstances as well as the law laid down in the abovementioned judgments, this Court deems it appropriate to grant the concession of regular bail to the petitioner. Further, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act, 1985.

10. Accordingly, 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 of, 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 from disclosing such facts to the Court or to any police officer or tamper with

the evidence.

11. 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.

12. However, 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.

**April 27, 2023**  
naresh.k

**( VIKAS BAHL )**  
**JUDGE**

Whether reasoned/speaking?  
Whether reportable?

Yes/No  
Yes/No