

CRM-M-5000-2023 (O & M)

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(221) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-5000-2023 (O & M)
Date of Decision: 31.07.2023

Boota Singh @ Boota

... Petitioner

Versus

Union of India

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Satwant Mehta, Advocate
for the petitioner.

Ms. Puneeta Sethi, APP,
for respondent No.1-NCB, Union of India.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail to the petitioner in case bearing Crime No.25 dated 07.04.2021 under Sections 8, 21, 23, 28, 29 and 30 of the NDPS Act in a complaint case No.324 dated 29.09.2021 at Police Station Khemkaran, District Tarn Taran.

2. The brief facts of the case are that on 07.04.2021, information was received by the Narcotics Control Bureau (NCB), Amritsar from the BSF, Khemkaran (Pb.) that 30 packets of heroin (suspected) and one Pakistani National smuggler had been apprehended and was to be handed over to the NCB for further investigation and proceedings.

Based on the said information, the NCB Team approached the BSF officials where it was disclosed to the Team that the contraband and one

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Pakistani National had been confined and the NCB was to take over the proceedings. On questioning, the Pakistani National revealed his named as Amjad Ali son of late Abdul Majid, resident of village Kharak, Police Station Manhyala, Tehsil Sayalamar, District Lahore, Pakistan. Amjad Ali further disclosed that he alongwith two of his colleagues one of whom was named Latif had come to the border on the directions of Asif Dogar, a Pakistani drug smuggler alongwith 21 packets of heroin to be delivered to one person, namely, Jaila of Punjab (India). Jarnail Singh @ Jaila @ Jaily had made WhatsApp call to him (Amjad Ali) to come near the border fence to pass the 21 packets of heroin through a pipe to him. He (Amjad Ali) alongwith his associates had reached near the Border fence. However, the BSF Troops fired on them. He (Amjad Ali) was apprehended while his associates, Latif and another person ran back towards Pakistan. Jaila had also run away towards the Indian Side. Later on, the BSF Team had apprehended him (Amjad Ali) and had also recovered a pipe and 21 packets of heroin. The total heroin which came to be recovered was 20.570 kgs. An iron Dhav, etc. came to be recovered alongwith mobile phones, a power bank etc.

Subsequently, the statement of Amjad Ali was recorded under Section 67 of the NDPS Act wherein he disclosed that he had come to the Border alongwith the contraband at the instance of one Asif Dogar and Asif Loya who had asked him to deliver the contraband to Jarnail Singh @ Jaila @ Jaily and his associates, namely, Boota Singh (petitioner), Ranjit Singh @ Jeet and Jugraj Singh @ Jaggu. Jarnail Singh @ Jaila @ Jaily was in touch with him through WhatsApp calls. On account of firing by the BSF Troops,

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his co-accused fled back towards Pakistant while he came to be apprehended. He duly identified the photographs of his Indian associates, namely, Boota, Jugraj Singh @ Jaggu, Ranjeet Singh @ Jeet and Jarnail Singh @ Jaila @ Jaily.

He also revealed the number of earlier attempts that had been made to smuggle heroin across the border. His mobile phone revealed the mobile numbers of Pakistani drug smugglers and India drug smugglers with whom he was regularly in touch.

Subsequently, the search of the residences of Jarnail Singh @ Jaila @ Jaily, Ranjeet Singh @ Jeet and Jugraj Singh @ Jaggu took place.

Jarnail Singh @ Jaila @ Jaily was arrested, pursuant to which, his statement under Section 67 of the NDPS Act was recorded on 17.04.2021. During his remand, he revealed the names of his co-accused and also identified the photographs of Amjad Ali, Boota (petitioner), Jugraj Singh @ Jaggu, and Ranjeet Singh @ Jeet. He also affirmed that he had made several WhatsApp calls and received calls to/from Amjad Ali on 06/07.04.2021. He also revealed that in his account No.867700100039050 of Punjab Gramin Bank, several transactions had been made by Ranjeet Singh @ Jeet of depositing money, the details of which he furnished. He also disclosed that on 06.04.2021 he alongwith Ranjeet Singh, Boota Singh (petitioner), Jugraj Singh and Sukha Singh had gone to the Khem Chand area in an Innova car and a Pulsar motorcycle bearing No.PB-05-AA-2654. He had contacted Amjad Ali through WhatsApp call. However, as the BSF party had started

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firing, he and his other associates alongwith the petitioner had fled away from the spot whereas the 21 packets of heroin came to be recovered.

Boota Singh @ Boota (petitioner) got recorded his statement under Section 67 of the NDPS Act on 02.05.2021. He admitted his role in the occurrence and stated that he had connived with Jarinal Singh @ Jaila @ Jaily and Sukha Singh to actively participate in the smuggling of drugs from Pakistan. He was arrested on the same date and during his remand, he revealed the name of his co-accused both Indian and Pakistani. He admitted that he had been paid Rs.8000/- for accompanying the other accused to take the delivery of heroin and that Jarnail Singh @ Jaila @ Jaily had promised him (Boota Singh) that he would get a house built for him (Boota) for his services in the delivery of heroin.

Co-accused Ranjeet Singh @ Jeet and Jugraj Singh @ Jaggu did not join the investigation despite notices being served upon them and their family members. Similarly, Sukha @ Sukha Singh also did not join investigation because of which P.O. proceedings were pending against the said three accused.

Based on the aforementioned facts, the instant complaint came to be filed.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He contends that the name of the petitioner figures in the disclosure statement of his co-accused, namely, Amjad Ali and Jarnail Singh @ Jaila @ Jaily. Pursuant to his arrest, no recovery whatsoever has been effected. Reliance is placed on the judgments

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in the cases of *Tofan Singh Versus State of Tamil Nadu, 2020 AIR (Supreme Court) 5592*, *Rakesh Kumar Singla Versus Union of India, 2021(1) RCR (Criminal) 704*, *Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence, 2018(3) RCR (Criminal) 954*, *State by (NCB) Bengaluru Versus Pallulabid Ahmad Arimutta & Anr. 2022(1) RCR (Criminal) 762*, *Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590*, *Vijay Singh Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023* and *Vikrant Singh Versus State of Punjab, CRM-M-39657-2020*.

It is his contention that in *“State of Haryana versus Samarth Kumar 2022 (3) RCR (Criminal) 991”* it has been held that an accused can be granted the concession of regular bail where he has been named in the disclosure statement of his co-accused though, anticipatory bail to such an accused cannot be granted. He contends that there are no CDRs showing that the petitioner was in contact with the arrested co-accused and no WhatsApp chats in that regard as well. As the petitioner was in custody since 02.05.2021 and only 05 of the 22 prosecution witnesses had been examined so far, the petitioner was entitled to the concession of bail, moreso, when he was a first-time offender.

4. The learned counsel for the respondent-NCB, on the other hand, contends that the petitioner does not deserve the concession of bail looking at the seriousness of the allegations. She, however, admits that the petitioner was named in the disclosure statement of his co-accused-Amjad Ali and Jarnail Singh @ Jaila @ Jaily the fact that the petitioner is in custody since

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02.05.2021, only 05 of the 22 prosecution witnesses had been examined so far and that he was a first-time offender. She also concedes that other than the disclosure statement there is no other corroborative evidence inculcating the petitioner.

5. I have heard the learned counsel for both the parties at length.

6. The Hon'ble Supreme Court in the case of **State of Haryana Versus Samarth Kumar** (supra), held as under:-

“4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh v. State of Tamil Nadu reported in (2021) 4 SCC 1.

5. But, it is contended by the learned Additional Advocate General appearing on behalf of the State of Haryana that on the basis of the anticipatory bail granted to the respondents, the Special Court was constrained to grant regular bail even to the main accused-Dinesh Kumar and he jumped bail. Fortunately, the main accused-Dinesh Kumar has again been apprehended. According to the learned Additional Advocate General, the respondent in the second of these appeals is also a habitual offender.

6. Learned counsel appearing on behalf of the respondent in the first of these Appeals contends that the State is guilty of suppression of the vital fact that the respondent was granted regular bail after the charge-sheet was filed and that therefore, nothing survives in the appeal. But, we do not agree.

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7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh v. State of Tamil Nadu (supra), perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents.

10. In view of the above, the appeals are allowed. The impugned orders are set-aside. As a consequence, the Appellant-State is entitled to take steps, in accordance with law.

[emphasis supplied]

In Vijay Singh Versus The State of Haryana, bearing Special

Leave to Appeal (Crl.) No.(s).1266/2023 decided on 17.05.2023, it was held

as under:-

“The petitioner is alleged to have committed offences under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called the NDPS Act”. His application for anticipatory bail was rejected by the High Court. The allegations in the FIR are that 1.7 Kg of Poppy Straw (Doda Post) was recovered from the co-accused. The petitioner concededly was not present at the spot but was named by the co-accused. That apart there is no other material to implicate the petitioner. The prosecution urges that another case with allegations of commission of offence under

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the NDPS Act are pending against the petitioner. It is not denied that in those proceedings he was granted bail.

Having regard to these circumstances, the petitioner is directed to the enlarged on anticipatory bail, subject to such terms and conditions as the trial Court may impose.

The petition is allowed.

All pending applications are disposed of.”

(emphasis supplied)

This Court in the case of **Vikrant Singh Versus State of Punjab,**

CRM-M-39657-2020, held as under:-

“It is not in dispute that the petitioners have not been named in the FIR. No recovery has been effected from the petitioners and the alleged recovery has been effected from two co-accused Rakesh Sharma and Ravdeep Singh alias Sheru. The petitioners are sought to be implicated solely on the basis of the disclosure statement made by the co-accused Rakesh Sharma and Ravdeep Singh @ Sheru and even after the petitioners were arrayed as accused in pursuance of the disclosure statements, no recovery had been made from the petitioners.

The petitioners have been in custody since 06.11.2020 (Vikrant Singh), 05.12.2020 (Subash Chander) and 23.04.2021 (Davinder Singh) and challan in the present case has already been presented and there are 32 witnesses, out of whom only one has been examined and thus, the trial is likely to take time on account of Covid-19 Pandemic. The petitioners are not involved in any other case. With respect to the call details, suffice to say that no dates on which the said calls had been allegedly made by the coaccused, Rakesh Sharma and Ravdeep Singh alias Sheru to the petitioners or vice-versa have been mentioned in the affidavit or in the report under Section 173 Cr.P.C. Moreover, even the

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transcript of the said conversations are not a part of the record under Section 173 Cr.P.C. A Division Bench of this Court in Narcotics Control Bureau's case (supra), was pleased to observe as under:-

Still further, no conversation detail between accused Ramesh Kumar Patil and accused Sandeep has been produced by the prosecution. Mere call details is not sufficient to prove that Sandeep accused was also involved in the business of narcotic drugs or he had any connected with Ramesh Kumar Patil.

In view of the above, no case is made out for grant of leave to appeal against the acquittal of Sandeep accused.”

In judgment of the Gujarat High Court in Yash Jayeshbhai Champaklal Shah's case (supra), it has been observed as under:-

“Having heard learned advocates for the appearing parties, it emerges on record that the applicant is not found in possession of any contraband article. Over and above that, the call data records may reveal that in an around the time of incident, he was in contact with the co-accused who were found in possession of contraband. Since there is no recording of conversation in between the accused, mere contacts with the co-accused who were found in possession cannot be treated to be a corroborative material in absence of substantive material found against the accused.”

A perusal of the above judgment would show that without the transcript of the conversations exchanged between the co-accused, mere call details would not be considered to be corroborative material in absence of substantive material found against the accused. In the

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present case, there is no other material against the petitioners.

Keeping in view the above-said facts and circumstances, as well as law laid down in the judgments noticed hereinabove, the present petitions are allowed and the petitioners are ordered to be released on bail on their furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to their not being required in any other case.

(emphasis supplied)

7. A perusal of the aforementioned judgments would show that bail can be granted to an accused where he has been named in a disclosure statement of his co-accused but there is no corroborative evidence other than the said disclosure statement.

8. In the instant case, the petitioner is named in the disclosure statement of his co-accused. The petitioner is a first-time offender, in custody since 02.05.2021 and only 05 out of the 22 prosecution witnesses have been examined so far. Therefore, the trial of the present case is not likely to be concluded anytime soon. In this situation, the further incarceration of the petitioner is not required as a *prima facie* satisfaction under Section 37 NDPS can be recorded in the aforementioned factual scenario.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Boota Singh @ Boota is ordered to be released on bail subject to his furnishing bail bonds and surety bonds to the satisfaction of learned CJM/Duty Magistrate, concerned.

10. The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in

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writing each time that he is not involved in any other crime other than the present one.

11. In addition, the petitioner (or someone on his behalf) shall prepare an FDR in the sum of Rs.2,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from trial without sufficient cause.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

July 31, 2023
sukhpreet

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