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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9911-2023 (O & M)

Date of decision: 23.08.2023

Advin @ Tanko Mohammed Ebube Nwankwo

.... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Saurabh Sharma, Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.327 dated 01.09.2022 under Sections 21/27-A of the NDPS Act (Section of the NDPS Act added later on) registered at Police Station Parao, District Ambala.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Anjali wife of Akbar alias Lucky, Anwar alias Abhi son of Shaka and Rekha wife of Shyamlal alias Shyama were in the business of supplying drugs. All of them had gone in a rented car bearing No.PB11CM-8500 make Swift DZire to collect heroin/*chitta* from Delhi and were roaming around giving supplies. They would be proceeding to Deha Colony, Ambala City from Shahabad. If a *nakabandi* is set-up, they could be apprehended.

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Based on the aforementioned information, a *nakabandi* was set-up and the Swift DZire car was seen coming from ahead. It was signalled to stop. The boy sitting on the driver seat disclosed his name as Rajbir Singh alias Raju (since granted bail vide order dated 02.08.2023 passed in CRM-M-28534-2023), the boy sitting on the adjacent seat disclosed his named as Anwar alias Abhi, the woman sitting behind the driver seat disclosed her name as Rekha and the other woman sitting with her called herself Anjali. She had a new born baby on her lap. After complying with the provisions of the Act regarding search and seizure, the recovery of 300 grams of heroin came to be effected from Anjali, 300 grams of heroin from Rekha and 400 grams of herion from Anwar alias Abhi.

During the course of investigation, the arrested accused were interrogated and on the basis of the interrogation, the petitioner-Advin Tanko Mohammed Ebube Nwankwo son of Mohammed Nwankwo, co-accused Salochna wife of Bittu and Shashi wife of Shaka were arrested in this case under Section 29 of the NDPS Act and Section 180 IPC was added. It came on the record that the petitioner had supplied the narcotic heroin to the co-accused.

On 20.10.2022, on getting information that the petitioner had already been arrested in FIR No.514/2022 under Sections 21, 29-61-85 of the NDPS Act and Sections 13, 14 of the Foreigner Act at Police Station Ambala City and had suffered a disclosure statement regarding the commission of the present offence before the Investigation Officer of Police Station Ambala City, he was joined in the investigation in the present case as

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well. As he refused to to sign the disclosure statement, Section 180 IPC was added in this case.

During the course of the investigation, the co-accused had disclosed that they had purchased the narcotic substance from one person named Michel. Similarly, the petitioner also disclosed about his involvement in the present offence.

On checking of the antecedents of the petitioner, it transpired that he did not have any permanent residence in India. At the time of his arrest, he had given his address as resident of House No.29, Didier Drgba Layout, Abidjan Ivory Coast, at present near Sant Kabir Modal School, Chander Vihar New Delhi. However, at the time of filing of his bail application before the Sessions Judge, Ambala, he gave his address as Gali No.16, Krishna Park, Extension Tilak Nagar, Vikas Puri, New Delhi. On verification of the said address, the same was found to be false. It was also found that the petitioner was a habitual offender and was involved in two other cases i.e. FIR No. 514/2022 under Sections 21, 29-61-85 of the NDPS Act and Section 13,14 of Foreigner Act at Police Station Ambala City and FIR No.288/2022 under Sections 21, 29-61-85 of the NDPS Act at Police Station Barar, District Ambala.

On the conclusion of the investigation, the report under Section 173 Cr.P.C. was presented against the petitioner and his co-accused citing 24 witnesses in the list of prosecution witnesses.

3. The learned counsel for the petitioner contends that the petitioner is in custody 20.10.2022 and none of the 23 prosecution witnesses

had been examined so far. Therefore, the trial of the case is not likely to be

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concluded anytime soon. He contends that in the instant case, the petitioner has been named in the disclosure statement of his co-accused. As he has been named in the disclosure statement alone without any corroborative evidence, he was entitled to the concession of regular bail, moreso, as he had been granted the similar concession in the other two cases. Reliance is placed on the judgments 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*.

4. On the other hand, the learned State counsel while referring to the reply dated 08.08.2023 contends that the petitioner is a habitual offender. Apart from the present case, he is involved in two other cases i.e. FIR No. 514/2022 under Sections 21, 29-61-85 of the NDPS Act and Section 13,14 of Foreigner Act at Police Station Ambala City and FIR No.288/2022 under Sections 21, 29-61-85 of the NDPS Act at Police Station Barar, District Ambala. He, therefore, contends that the antecedents of the petitioner did not entitle him to the grant of regular bail in the peculiar facts and circumstances of the present case.

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6. The Hon'ble Supreme Court in the case of **State of Haryana Versus Samarth Kumar 2022 (3) RCR (Criminal) 991**, 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.

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

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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]

7. 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 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.”

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(emphasis supplied)

8. 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 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

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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 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.

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(emphasis supplied)

9. This Court in the case of **Ranjit Singh Versus State of Punjab,**
CRM-M-25526-2023, decided on 17.07.2023, held as under:-

“8. Coming back to the facts of the present case, it is pertinent to note here that other than the instant FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of the arrested accused, the petitioner is also an accused in two other cases under the NDPS Act. In addition, he had been an accused in three other cases, though he has been acquitted in the said cases. It is highly unlikely that the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency.

9. When there are multiple FIRs against a person over a significant period of time (in this case 18 years), then even though he may have been acquitted in some of those cases, the twin conditions as envisaged under Section 37 of the NDPS Act that he has not committed an offence and was not likely to commit an offence cannot be satisfied.

10. Keeping in view the conduct of the petitioner and his criminal antecedents, his custodial interrogation would certainly be necessary to effect necessary recoveries and to take the investigation to its logical conclusion.

11. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

(emphasized supplied)

10. In **Samarth Kumar** (supra) the Hon'ble Supreme Court had clearly held that an accused who had been named in the disclosure statement of a co-accused was not entitled to the grant of anticipatory bail but could be granted regular bail. However, in **Vijay Singh** (supra) a somewhat contrary

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anticipatory bail even though he had been an accused in another case under the NDPS Act in which he was on bail. In **Vikrant Singh** (supra) this Court held that where an accused had been named in the disclosure statement of his co-accused and there were CDRs/WhatsApp calls/chats between the arrested accused and the person named in a disclosure statement then in the absence of the contents of the conversation/chats bail could not be denied to the said accused. In **Ranjit Singh** (supra) it has been held by this Court that where there were multiple FIRs against an accused over a period of time then, even though he had been named in a disclosure statement, he was not entitled to the concession of bail.

11. Coming back to the facts of the present case, it is relevant to mention here that other than the present FIR, there are two other cases vide FIR No. 514/2022 under Sections 21, 29-61-85 of the NDPS Act and Section 13, 14 of Foreigner Act at Police Station Ambala City and FIR No.288/2022 under Sections 21, 29-61-85 of the NDPS Act at Police Station Barar, District Ambala stand registered against him. It is highly unlikely that the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency, moreso, when he is a foreign national.

12. In fact, when there are multiple FIRs against an accused over a significant period of time, then the twin conditions as envisaged under Section 37 of the NDPS Act that he had not committed an offence and was not likely to commit an offence cannot be satisfied.

13. Keeping in view the conduct of the petitioner, his criminal antecedents and the fact that being a foreign national, he could abscond from

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the trial, no ground is made out to grant the concession of regular bail to the petitioner.

14. In view of the above, I find no merit in the present petition.
Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 23, 2023
sukhpreet

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