IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CRM-M-12724-2022(O&M)

Date of Decision:-09.01.2023

Sukhchain Singh@ Sarpanch @ Mithu.

......Petitioner.

Versus

Directorate of Enforcement thorugh Assistant Director (PMLA).

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. G.S. Goraya, Advocate for the Petitioner.

Mr. Satyapal Jain, Additional Solicitor General of India with Ms. Sharmila Sharma, Senior Panel Counsel for UOI.

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JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case ECIR No.ECIR/JLZO/02/2016, Coma No.1 of 2018 dated 20.11.2018 titled as Directorate of Enforcement Vs. Athar Saeed and Others under Section 45 Prevention of Money Laundering Act, 2002.

The brief facts of the case are that an FIR No.2 dated 27.03.2016 under Sections 21, 29 NDPS Act P.S. SSOC Amritsar came to be registered on the statement of Inspector Gurinder Pal Singh with the allegations that secret information was received that one Shahid Chuha @ Shahid who was in the business of dealing in cloth had close relations with Indian and Pakistani smugglers. Under the garb of the cloth business he used to supply fake currency and Heroin from Pakistan. On the instructions of the said Shahid Chuhan @ Shahid one Athar Sayeed was standing near the bus stand Amritsar to hand over Heroin and money earned from selling Heroin and ordinary Indian currency to a person namely Shelly. If a raid was conducted he could be arrested with the heroin and drug money earned from selling heroin. Based on the said information, one Athar Sayeed son of Ahmad Sayeed was arrested and the recovery of 500 gm heroin and Rs.17 lacs said to be the proceeds of sale from drugs came to be effected from the said Athar Sayeed. During the course of investigation the petitioner was nominated as an accused on the statement of Athar Sayeed.

In the aforementioned FIR Athar Sayeed has been granted the concession of regular bail by this Court vide order dated 20.03.2018 (Annexure P-2). The petitioner has been granted the concession of regular bail vide order dated 18.02.2022 (Annexure P-4).

Meanwhile, FIR No.3 dated 14.05.2016 under Sections 8, 21, 29 of NDPS Act, 1985 Police Station NCB, Jammu came to be registered in which the petitioner-Sukhchain Singh @ Sarpanch @ Mithu was arrested and a recovery of Rs.1 lac was effected from him. Thereafter the petitioner came to be arrested in FIR No.2 on 30.05.2016. Be that as it may, the petitioner has been acquitted vide judgment dated 01.11.2022 in the trial conducted pursuant to the FIR No.3 dated 14.05.2016

Meanwhile, with respect to FIR No.2 dated 27.03.2013 a prosecution complaint was lodged under Section 45 of the Prevention of Money Laundering Act, 2002 against Athar Sayeed, Sukhchain Singh (petitioner) and Shahid Malik @ Shahid Chuha. It was stated in the complaint dated 20.11.2018 that the three accused were indulging in the smuggling of Heroin as had been mentioned in their statements before the investigating officer during investigation under Section 50 of the PML Act

2002. They had also generated the proceeds of crime through money from drugs smuggling and were indulging in the process/activity connected with the proceeds of crime and projected it as untainted property thereby committing the offence of money laundering under the provisions of the said Act. The copy of the complaint dated 20.11.2018 is attached as Annexure P-1.

Athar Sayeed who had been granted bail in FIR No.2 vide order dated 20.03.2018 (Annexure P-2) and sought the concession of anticipatory bail in the present complaint under the PML Act 2002 and was granted the concession of interim bail vide order dated 16.7.2019 (Annexure P-3). The interim order has been continued ever since and the case is now pending for 13.03.2023.

Meanwhile the petitioner sought the concession of bail in the aforementioned complaint Annexure P-1 and the same was denied vide order dated 17.8.2021 (Annexure P-5).

The Counsel for the petitioner contends that the present complaint is arising out of FIR No.2 dated 27.02.2016 under Sections 21, 29 of NDPS Act registered by the State Special Operation Cell, Amritsar. In the said case the petitioner has been granted the concession of bail vide order dated 18.02.2022 (Annexure P-4). As per investigation it has been found that the petitioner had only one property in his name which was his ancestral property and the branch manager of UCO Bank, Chogawan has furnished information that there was Zero balance in the account no.13240110003947 of the petitioner and the statement of account revealed that there was an entry regarding deposit of Rs.60,000/- by cash in the said account. He contends that the allegations that the petitioner received money from proceeds of crime and invested the same in the property is completely baseless. Even otherwise in the present complaint case Athar Sayeed who was arrested with 500 grams of heroin and Rs.17 lacs cash has been granted the concession of interim anticipatory bail. The case of the petitioner is certainly on a better footing. The petitioner was in custody since 10.10.2019 (Annexure P-6) and 05 witnesses out of 07 have been examined. As such, though the trial was likely to be concluded in the near future his further incarceration was not required in the given facts and circumstances he ought to be granted the concession of regular bail. Even otherwise, in the present case, the petitioner was sent to judicial custody vide order dated 16.10.2019 (Annexure P-6) on the statement of the Special Public Prosecutor for the Directorate of Enforcement that the petitioner was not required by the complainant department for the purposes of investigation.

The Counsel for the respondent-ED on the other hand has filed affidavits. As per the said affidavits the petitioner was involved in drug trafficking and money laundering. There was an apprehension that the petitioner would escape and would not be available for trial in the present case. Another accused namely Shahid Malik @ Shahid Chuha had not joined investigation for the last 06 years nor appeared/surrendered before the Special Judge (Designated) under the PMLA and was declared as a proclaimed offender vide order dated 15.02.2022 (Annexure R-1). As per the investigation it had been revealed that the petitioner had indulged in smuggling of heroin and he had made payments of money generated from drug smuggling to Athar Sayeed on the instructions of smuggler named Lala. However, it has been admitted that the said Athar Sayeed had been granted bail by this Court vide order dated 20.03.2018 (Annexure P-2), in

FIR No.2 dated 27.03.2016 whereas in the present case he has been granted the concession of interim anticipatory bail vide order dated 16.07.2019 (Annexure P-3). He thus contends that the serious nature of the allegations against the petitioner did not entitle him to the grant of bail.

I have heard learned Counsel for the parties at length.

Admittedly, the proceedings in the present case arise out of the FIR No.2 dated 27.03.2016 under Section 21, 29 of NDPS Act registered at Police Station S/SOC, Amritsar. In the said case, the arrested accused namely Athar Sayeed from whom the recovery of 500 grams of heroin and Rs.17 lacs cash was effected has been granted the concession of regular bail vide order dated 20.03.2018 (Annexure P-2). The petitioner has also been granted the concession of regular bail in the said case vide order dated 18.02.2022 (Annexure P-4). In the present complaint case Athar Sayeed has been granted the concession of interim anticipatory bail vide order dated 16.07.2019 (Annexure P-3) and the case is now posted for hearing on 13.03.2023. So far as the petitioner is concerned, no recovery has been effected from him. The Special Public Prosecutor himself stated at the time the petitioner was taken into custody in the present case that his custodial interrogation was not required because of which he was sent to judicial custody. The petitioner is in custody in the present case since 10.10.2019. As many as 05 out of 07 witnesses had been examined. In the other case registered i.e. FIR No.3 dated14.5.2016 under Section 8, 21, 29 of NDPS Act registered at Police Station NCB Jammu the petitioner stands acquitted. Merely because one of the co-accused namely Shahid Malik @ Shahid Chuha has been declared a proclaimed offender cannot be a ground to reject the regular bail of the present petitioner. Therefore, keeping in view the attending facts and circumstances, the further incarceration of the petitioner is not required even though the Trial is at the fag end.

Thus, without commenting on the merits of the case, the present petition is allowed and petitioner-**Sukhchain Singh @ Sarpanch @ Mithu son** of Sh. Surjit Singh is ordered to be released on bail subject to the satisfaction of learned Trial Court/Duty Magistrate, concerned.

The petitioner shall appear before the police station State Special Operations Cell(SSOC), Amritsar on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the cases mentioned in this order.

In addition, the petitioner (or any one on their behalf) shall prepare a 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.

The petitioner shall surrender his passport with the Trial Court immediately.

The petition stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

January 09, 2023
Vinay

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***