

2023:PHHC:104144

CRM-M-13549-2023 (O & M)

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

CRM-M-13549-2023 (O & M)
Date of Decision: 10.08.2023

Rahul

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Dr. Pankaj Nanhera, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.161 dated 03.05.2022 under Sections 21C, 27A, 29, 68F, 61 and 85 of the NDPS Act, registered at Police Station Firozpur, Jirkha, District Nuh, Haryana.

2. The brief facts of the case are that on 03.05.2022 at about 3.40 p.m., while the police party was on the patrolling duty, secret information was received that accused Ansar and Mormal were doing the business of selling contraband and would be coming in a vehicle bearing No.HR-74A-8269. If a raid was conducted, they could be apprehended with cannabis. Thereafter, the raiding party was constituted and the vehicle was seen coming from the opposite side. It was stopped and on enquiry, the driver of the vehicle disclosed his named as Ansar and the cleaner disclosed his name as Mormal.

On enquiry, they informed the police party that the contraband which they

had been carrying had been dropped in a dry dug-well in village Sakras. They were taken to the spot and the recovery of 10 bags containing 313 kgs. 100 grams of cannabis came to be effected. The accused were arrested and the instant FIR came to be registered.

During the course of investigation, PW-Ajit and Ajay were examined and it was found that the vehicle involved had been taken on rent by accused Surender @ Sarpanch. The bank account of Surender @ Sarpanch and his wife were seized and it was found that there were huge transactions of money in connection with the illicit business of narcotics. It also came to the light that the vehicle in question bearing registration No. HR-74A-8269 was owned by Wahid son of Sahabuddin who had given the same to Surender @ Sarpanch on rent @ Rs.1,00,000/- per month.

During the course of investigation, Surender @ Sarpanch was joined in the proceedings. In pursuant to his disclosure statement, he got recovered two mobile phones and one dongle which were taken into police possession. Section 27A of the NDPS Act was added after examining bank account of the accused. The above-mentioned accused also disclosed about the involvement of the co-accused, namely, Sanjiv Shah son of Lallu Shah, Anwar son of Mohd. Karim Khan, Parveen @ Gora son of Sahab Singh, Subhash, Rahul (petitioner) son of Rakesh Kumar, Sandeep son of Mattadin and one Mallu @ Nitin.

Accused-Parveen was arrested in the present case on 31.07.2022 and suffered his disclosure statement that Rahul (petitioner) and Subhash

were also with him in the vehicle when he had visited Orissa to bring the aforementioned contraband.

Accused Sanjiv Shah was arrested on 01.08.2022 and got recovered Aadhar Cards, driving licence, ATM cards, PAN cards and Rs.20,800/- which were taken into possession of the investigating officer. He also got recovered two mobile phones used in the commission of the offence and a vehicle bearing registration No.DL-12-CM-8052 alongwith a bag containing jewellery. He also got recovered 25 mobile phones, dongles, SIM cards all of which were taken into possession. One Duster bearing registration No.DL-08-CAF-8442 and a Swift Dzire bearing registration No. DL-9C-9697 alongwith a Samsung phone were also recovered from him.

As per the investigation, the petitioner-Rahul is stated to have been working as a driver with Sanjiv Shah who had promised to pay the petitioner an amount of Rs.10,000/- per trip for driving his vehicle/canter from Orissa. Co-accused Sanjiv Shah had also purchased an XUV vehicle bearing No.DL-11-CA-1824, Duster bearing registration No.DL-8CAF-8442, Swift VDI bearing registration No.DL-12CM-8052 and Swift Dzire bearing registration No.DL-9C-9697. Rahul had started to drive the said vehicles of Sanjiv Shah on his directions. On 14.04.2022, co-accused/Sanjiv Shah had asked the petitioner to bring a vehicle loaded with contraband (*ganja*) from Orissa. The petitioner and his co-accused/Sanjiv Shah and Subhash had reached Rewari in vehicle bearing registration No.DL-11CA-1824 where they met the co-accused/Parveen who sat in the vehicle and they all went to Narnaul to meet Surender @ Sarpanch. Co-accused/Surender @ Sarpanch

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gave them a sum of Rs.10,60,000/- for bringing the contraband from Visakhapatnam. After that the petitioner alongwith his co-accused Parveen reached Visakhapatnam but had to come back. Thereafter, he (petitioner) went to Bhopal alongwith Sanjiv Shah.

A co-accused Anwar Khan was arrested on 05.08.2022 and he was interrogated. He got recovered two mobile phones and disclosed that he had handed over the vehicle with contraband to co-accused/Parveen and others.

Accused Parveen and Nitin @ Mallu were bringing the contraband in Canter bearing registration No.HR-74A-8269 and it was snatched by the co-accused Ansar, Mormal and then co-accused. 600 kgs. of cannabis was taken away by the co-accused who were yet to be arrested and Canter No.HR-74A-8269 was brought to Mewat by the accused-Mormal and Ansar when they were apprehended by the CIA Police Tauru. The accused had got recovered 313 kgs. 100 grams of cannabis from a dry dug well.

As per the investigation, there were 20 accused who were found involved in the present case and out of them 07 accused, namely, Ansar son of Sahid Ahmad, Mormal son of Mehrab, Surender @ Sarpanch son of Sedhu Ram, Parveen son of Sahab Singh, Rahul (petitioner) son of Rakesh, Mohd. Anwar son of Mohd. Karim Khan and Sanjiv Kumar Shah son of Lalu Shah were arrested and the remaining 12 accused, namely, Wahid son of Suleman, Ishrar son of Bukha, Altaf son of Sahid Ahmed, Sahid Ahmed son of Muzer, Anish son of Sultan, Ishup son of Samsher, Ikrum son of Jakir, Subhash son

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of Moti Ram, Nitin @ Mallu son of Paras, Sandeep son of Mattadin, Mohd. Sakir son of Sultan and Mustkim son of Samshu are yet to join investigation.

3. The learned counsel for the petitioner contends that the petitioner had been falsely implicated in the present case. He contends that the name of the petitioner figured in the disclosure statement of his co-accused, namely, Surender @ Sarpanch and others. Pursuant to his arrest, no recovery whatsoever had been effected. 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, State of Haryana versus Samarth Kumar 2022 (3) RCR (Criminal) 991 and Vikrant Singh Versus State of Punjab, CRM-M-39657-2020.”, wherein it has been held that the 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. As the petitioner was in custody since 01.08.2022 and none of the 44 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-State, on the other hand, while referring to the reply dated 14.07.2023 filed by way of an affidavit of Om Parkash, HPS, Deputy Superintendent of Police, Traffic & Crime & Law and Order, Nuh, contends that the petitioner-Rahul was working as a driver with co-accused Sanjiv Shah for supplying contraband. Therefore, he was also involved in the illicit business of narcotics and was not entitled to the grant of bail. He, however, admits that the petitioner is named in the disclosure statement of his co-accused/Surender @ Sarpanch and no recovery was effected from him. He also concedes that the petitioner was a first-time offender, in custody since 01.08.2022 and none of the 44 prosecution witnesses have been examined so far.

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.

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 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 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 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. Though, he is said to be working as a driver with his co-accused/Sanjiv Shah, but no recovery whatsoever has been effected from him. Further, the petitioner is a first-time offender, in custody since 01.08.2022 and none of the 44 prosecution witnesses have been examined so far. Therefore, the Trial in the present case will not conclude anytime soon. Hence, 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.

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9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Rahul 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 writing each time that he is not involved in any other crime other than the present one.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an FDR in the sum of Rs.1,00,000/- 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

August 10, 2023

sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No