

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.211

CRM-M-14503-2023 (O&M)

Date of decision : 24.05.2023

Mahesh Kumar

..... Petitioner

VERSUS

Central Bureau of Narcotics, Preventive & Intelligence Cell

.... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Vaibhav Katoch, Advocate, for the petitioner.

Mrs. Puneeta Sethi, Sr. Panel Counsel with
Ms. Chanchal, Advocate, for the respondent.

SUDHIR MITTAL, J. (Oral)

The petitioner seeks regular bail in Crime No.02/2022 dated 05.07.2022, registered at Preventive & Intelligence Cell, Central Bureau of Narcotics, New Delhi, under Sections 8, 21, 25, 27-A, 28, 29, 30 & 35 of the NDPS Act, 1985 (hereinafter referred to as the Act).

2. On receipt of information on 04.07.2022, complaint was registered and a naka was laid on 05.07.2022, where, co-accused Manoj Kumar was arrested. Recovery of 02 kgs. diphenoxylate powder was made from him. Subsequently, his house and other premises were raided resulting in recovery of 51.095 kgs. of the same powder. In all, recovery was made of 53.095 kg. of diphenoxylate.

3. Aforementioned co-accused Manoj Kumar got a disclosure statement recorded on the same day that the petitioner used to supply him material for manufacture of the drug recovered. Based on this statement, the

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petitioner was arrested on 07.07.2022. Thus, the present petition has been filed for grant of regular bail.

4. Learned senior counsel for the petitioner has argued that the petitioner is a licensed chemist and his shop functions under the name and style of Modern Medical Store. Work of optician was also being done from the said shop and the petitioner had employed co-accused Manoj Kumar therein as he possessed knowledge of the same. While he was employed, a sum of Rs.1.5 lacs was lent to him. Manoj Kumar decided to start his own business after some time and left. The chemist shop was duly licensed as is evident from Annexures P3 & P4. No recovery of any narcotic substance has been made from any of the premises of the petitioner. Banking transactions between the petitioner and co-accused Manoj Kumar are confined to four in number and all of them except one were below Rs.20,000/-. These transactions reflect partial re-payment of loan taken. Thus, there does not exist any evidence against the petitioner apart from the disclosure of co-accused Manoj Kumar and the said disclosure statement is no evidence in the eyes of law. Names of other persons have also been disclosed, but none of them have been nominated an accused. The petitioner has been in custody for about 11 months and the trial is not likely to be concluded at an early date as examination of PWs has not yet started. There are a total of 49 PWs. The petitioner does not have any criminal antecedents and thus, he deserves the concession of regular bail. Reliance is placed upon Tofan Singh Vs. State of Tamil Nadu, 2021 4 SCC 1 and State by (NCB)

Bengaluru Vs. Pallulabid Ahmad Arimutta and another 2022 (1) RCR Criminal 762 .

5. Learned counsel for the respondent has argued that apart from the disclosure statement of co-accused Manoj Kumar, joint statements of the petitioner and co-accused Manoj Kumar were recorded after taking permission from the Court. From the said statements, it has come to light that co-accused Manoj Kumar came to know about the illicit manufacture and sale of narcotic by the petitioner while he was working with him. Thereafter, he was involved in the business by the petitioner who utilized his services for transportation. Later, he also taught him the procedure of preparing the drug. The petitioner is the master-mind of the operation. This statement is substantiated by whatsapp chats recovered from the mobile phone of co-accused Manoj Kumar. Voice recordings have also been recovered and they clearly establish the involvement of the petitioner. There is evidence of receipt of money from addicts by the petitioner in the shape of bank account statement. The mobile phone of the petitioner was also cloned, but nothing could be recovered therefrom as all data had been wiped. This by itself indicates a guilty mind. Tofan Singh (supra) would not be applicable in this case as there is other corroborative evidence available apart from the disclosure of the co-accused. Learned counsel has relied upon judgment dated 19.07.2022 passed in Criminal Appeal Nos.1001-1002 of 2022 titled as Narcotics Control Bureau Vs. Mohit Aggarwal. Bar of Section 37 of the Act has also been argued.

6. Regarding the corroborative evidence relied upon by learned counsel for the respondent, learned senior counsel for the petitioner has argued that the same is a figment of the imagination of the prosecution. There is nothing in the entire challan which may show that the whatsapp chats between the petitioner and co-accused Manoj Kumar were regarding drug dealing. Nothing incriminating is contained even in the voice messages recovered from the mobile phone of co-accused Manoj Kumar. The statements recorded after obtaining orders from the Court are no better than disclosure statements made in the custody of the prosecuting agency and despite Section 67 of the Act, Tofan Singh (supra) holds that such statements are inadmissible in evidence. The bank transactions referred to in the reply are of small sums of money and by themselves, they do not indicate any culpability. The persons who have deposited the money have not been named as accused nor does the prosecution have any evidence of their involvement.

7. Regarding the status of the trial, parties are *ad idem* that total of 49 PWs have been named in the challan and none of them has been examined. Thus, it can safely be inferred that the trial is not likely to be concluded at an early date.

8. The argument of the petitioner is that disclosure made in police custody is no evidence in the eyes of law. Apart from the same no other evidence is available against the petitioner and thus, he deserves to be granted regular bail more so because the trial is not likely to be concluded at an early date and his custody being of the order of 11 months. The petitioner

also does not have any criminal antecedents. On the contrary, the case of the respondent is that other material is available on the record and the same substantiates the contents of the disclosure statement. This material is in the nature of whatsapp chats, voice calls and bank transactions.

9. Learned senior counsel for the petitioner has stated at the bar that the whatsapp chats and voice recordings available in the challan do not support the argument raised on behalf of the respondent. Nothing incriminating exists therein. Learned counsel for the respondent has been unable to dislodge this submission nor has she been able to establish its falsity. Thus, even though, the reply states that the whatsapp chats and voice recordings incriminate the petitioner, the statement cannot be relied upon. Learned counsel for the respondent has also not been able to contradict the submission made on behalf of the petitioner that the banking transactions relied upon are of small sums of money and that there is no evidence available in the challan regarding the involvement of the persons from whom the money has been received in the drug trade. Thus, the argument raised on behalf of the respondent deserves to be rejected.

10. Tofan Singh (supra) clearly holds that statements recorded in the police custody are inadmissible in the trial. The same has been reiterated in Pallulabid Ahmed Arimutta (supra). Thus, there is no gainsaying that the evidence available against the petitioner is inadmissible, even though, it may have been recorded after taking permissible from the Court. The judgment in Mohit Aggarwal (supra) also does not help the case of the respondent as in the said case, bail granted by the High Court was cancelled by the

Supreme Court because disclosure of the accused had led to huge recoveries from other persons. Nothing of the kind has happened in this case.

11. Section 37 of the Act provides that in cases of recovery of commercial quantity of narcotic substance, the Court cannot grant bail unless (i) it is satisfied that the accused person is likely to be acquitted and (ii) he is not likely to commit any offence while on bail. The fact that there is no admissible evidence available against the petitioner is sufficient to hold that the petitioner is likely to be acquitted, although, such a finding would not be binding in the trial as evidence has not been examined minutely. The fact that the petitioner has clean antecedents can give rise to a reasonable inference that he will not commit any offence while on bail. Thus, the statutory prescription stands satisfied.

12. The petition is, accordingly, allowed. It is directed that the petitioner be released on bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Judicial Magistrate, concerned.

(SUDHIR MITTAL)
JUDGE

24.05.2023
Ramandeep Singh

Whether speaking / reasoned

Yes

Whether Reportable

No