

CRM-M-15945-2023 (O & M)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15945-2023 (O & M)

Date of decision: 29.05.2023

Gurjeet Singh @ Mona

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Rajwinder Kaur Sandhu, Advocate,
for the petitioner.

Mr. Harkanwar Jeet Singh, AAG, Punjab.

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.124 dated 07.07.2022 under Section 22 of the NDPS Act (Section 29 NDPS Act added later on) registered at Police Station Vairo Ke, Distt. Fazilka.

2. The brief fact of the case are that on 07.07.2022, when the police party headed by ASI Hardev Singh was present in the area of Canal Bridge, Ratta Khera, a person came there riding on a motorcycle from the side of village Chak Khadunj @ Kaniya. He was signalled to stop. On seeing the policy party, he became perplexed and tried to turn back. He was apprehended on suspicion and disclosed his name as Balwant Singh @ Premi son of Dasondha Singh. Strips of intoxicant tablets were clearly

CRM-M-15945-2023 (O & M)

::2::

visible in the side pocket of shirt of Balwant Singh @ Premi. Initially, FIR No.124 dated 07.07.2022 under Sections 22 & 29 of the NDPS Act at Police Station Vairo Ke, District Fazilka, came to be registered against Balwant Singh @ Premi. Meanwhile, senior police officials were called to the spot and the search of Balwant Singh @ Premi was conducted as per the provisions of the NDPS Act. He was found to be in possession of 09 strips of intoxicant tablets containing 10 tablets each totalling 90 intoxicant tablets of Tramadol Hydrochloride tablets 100 mgs.

Balwant Singh suffered his disclosure statement whereby he disclosed that he alongwith Surjeet Kaur were indulging in the business of selling intoxicant tablets. On the basis of the said statement, Surjeet Kaur was also nominated as an accused in the present case. Thereafter, the police raided the house of Surjeet Kaur and she was interrogated. Based on the disclosure statements of Balwant Singh @ Premi and Surjeet Kaur, they got recovered 1000 tablets of Tramadol 100 mg. Which were taken into police possession. Thereafter, both the accused were arrested as per law and vide *rapat* 039 dated 07.07.2022, the offence under Section 29 of the NDPS Act was also added.

During the course of custodial interrogation, both the accused disclosed that they had purchased the said intoxicant tablets from Gurjeet Singh @ Mona (petitioner), who was nominated as an accused vide DDR No. 15 dated 10.07.2022. The petitioner was, thereafter, arrested on 14.07.2022.

CRM-M-15945-2023 (O & M)

::3::

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. His name has figured in the disclosure statement of his co-accused which has no evidentiary value in the eyes of law. 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*' and '*Sanjeev Chandra Agarwal & Anr. Versus Union of India 2021(4) RCR (Criminal) 590*'. It is his contention that in "*State of Haryana versus Samarth Kumar 2022 (3) RCR (Criminal) 991*", 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 14.07.2022 and none of the 14 prosecution witnesses had been examined so far, he was entitled to he was entitled to the concession of bail. Even otherwise, in one other case registered against the petitioner vide FIR No.159 dated 11.06.2021 under Sections 22, 61 and 85 of the NDPS Act at Police Station Sadar, Fazilka, he had been granted the concession of interim bail by the Judge, Special Court, Fazilka, vide order dated 15.07.2021.

4. The learned counsel for the State, on the other hand, contends

that commercial quantity of contraband had been recovered from the

CRM-M-15945-2023 (O & M)

::4::

co-accused of the petitioner, and therefore, in view of the bar contained under Section 37 of the NDPS Act, the petitioner was not entitled to the concession of bail. He, however, concedes that the petitioner was named only in the disclosure statement of the arrested co-accused and no recovery had been effected from him pursuant to his arrested. He also concedes that the petitioner had been granted the concession of interim bail in FIR No.159 dated 11.06.2021, was in custody since 29.03.2023 and none of the 14 prosecution witnesses had been examined so far.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case titled "***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 vs. 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

CRM-M-15945-2023 (O & M)

::5::

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 vs. 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”.

7. In the instant case, the petitioner is named in the disclosure statement of his co-accused and pursuant to his arrest, no recovery has been effected from him. Therefore, a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded. Further, in view of the judgment of the Hon’ble Supreme Court in **Samarth Kumar (supra)**, the case of the petitioner can be considered for the grant of regular bail, moreso, when in the other case i.e. FRI No.159 dated 11.06.2021 he has been granted the

CRM-M-15945-2023 (O & M)

::6::

15.07.2021. Even otherwise, the petitioner is in custody since 14.07.2022 and none of the 14 prosecution witnesses have been examined so far thereby delaying the conclusion of the Trial.

8. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Gurjeet Singh @ Mona, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

9. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that he is not involved in any case(s) other than the case(s) mentioned in this order.

10. In addition, the petitioner (or through someone on his behalf) shall prepare an FDR in the sum of Rs.50,000/- 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.

May 29, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No