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

CRM-M-29494-2023

Date of Decision: 05.12.2023

DEEPAK KUMAR

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

This 2nd petition is for the grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.126 dated 01.08.2019 registered under Sections 21 and 29 of NDPS Act, 1985 with the Police Station Sadar, Kapurthala, District Kapurthala.

2. The brief facts of the case are that while the police officials were on patrolling duty then at about 08.30 AM one clean shaven person with a black coloured bag in his right hand was seen getting down from an auto rickshaw and walking towards an I-20 car standing nearby. There were five persons in the car, who were identified as Rajbir Singh, Sukhjiwan Singh sons of Balwant Singh, Lovepreet Singh @ Lovely son of Gurcharan Singh, Hans Raj son of Dara Singh and Dilbag Singh son of Balwinder Singh. The person who had got down from the auto rickshaw upon seeing the police party got nervous and tried to turn back and the I-20 car being driven by Rajbir Singh also fled away from the spot. The person who got down from

the auto rickshaw was apprehended by the police officials and on inquiry disclosed his name as Kapil Arora son of Manohar Lal Arora. The recovery of 5 Kg heroin/dracityumphrine came to be recovered from him.

The petitioner-Deepak Kumar, his wife Payal and certain other accused came to be nominated as accused on the basis of the disclosure statement of the arrested accused Kapil Arora.

3. The learned counsel for the petitioner contends that the petitioner is not named in the FIR. He has been named during the course of investigation in the disclosure statement of Kapil Arora and no recovery has been effected from him. The said disclosure statement has no evidentiary value. The main accused Kapil Arora as well as all the other accused had been granted the concession of bail vide orders (Annexures P-2 to P-7). As the petitioner had undergone a total custody of 11 months and 17 days and only 02 of the 42 prosecution witnesses had been examined so far, he was entitled to the concession of bail moreso when no other case stood pending against him under the NDPS Act. Reliance is placed on the judgments in *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.

4. On the other hand, the learned State counsel while not disputing the fact that all the co-accused of the petitioner have been granted the concession of bail as also period of custody undergone by the petitioner contends that the petitioner was not entitled to the concession of bail in view of the serious nature of the allegations.

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

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 and no recovery of any contraband has been effected from him. The petitioner has undergone total custody of 11 months and 17 days, only 02 of the 42 prosecution witnesses have been examined so far. Therefore, the Trial in the present case is not likely to be concluded 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.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-Deepak Kumar son of Satish Kumar 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

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in writing each time that he is not involved in any other crime other than the present case.

11. In addition, the petitioner (or anyone on his behalf) shall prepare an 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.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

05.12.2023

JITESH

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