

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 02.11.2023

1. CRM-M-29923-2023

Rishi Khanna Petitioner

versus

State of Punjab Respondent

2. CRM-M-29924-2023

Rishi Khanna Petitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Short reply by way of affidavit of Sarvanjit Singh PPS, Deputy Superintendent of Police, Sub Division Fatehgarh Churian, Police District Batala on behalf of the respondent-State has been filed in CRM-M-29923-2023. The same is taken on record.

2. These two petitions filed by the petitioner in two different FIRs apprehending his arrest i.e. FIR No.50 dated 24.05.2022, registered for offences punishable under Sections 22, 29, 32 and 35 of NDPS Act at Police Station Fatehgarh Churian, Police District Batala,

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District Gurdaspur and FIR No.94 dated 17.09.2022, registered for offences punishable under Sections 22 and 29 of NDPS Act at Police Station Fatehgarh Churian, Police District Batala, District Gurdaspur.

3. Counsel for the petitioner submits that as per the case of prosecution, one Bhupinder Singh was arrested after having been found to be in possession of 100 intoxicated tablets. Bhupinder Singh suffered a disclosure statement where he nominated one Kuldeep Singh owner of a medical store to be the sources of contraband. Kuldeep Singh was arrested who further nominated the present petitioner.

4. Counsel for the petitioner submits that the petitioner was in fact wholesale dealer of medicines and was earlier running business through partnership firm alongwith his brothers which got dissolved owing to dispute between the partners. It has been further contended that there is no link between the alleged Kuldeep Singh/Kuldeep Medical Store and the petitioner, apart from mere disclosure made by Kuldeep Singh while in police custody.

5. *Per contra*, State counsel however submits that there is another FIR against the petitioner in which the petitioner faces similar allegations under NDPS Act.

6. Faced with the situation, learned counsel appearing for the petitioner submits that the said FIR i.e. FIR No.94 dated 17.09.2022 was registered subsequent to the FIR No.50 dated 24.05.2022 again on the disclosure of the same person i.e. Kuldeep Singh. In the absence of any cogent evidence to establish relationship between the petitioner and said Kuldeep Singh, the petitioner cannot be nominated merely on the

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basis of disclosure made by Kuldeep Singh. Further reliance upon *Tofan Singh vs. State of Tamil Nadu* reported as (2021) 4 SCC 1 to submit that the disclosure made in police custody cannot be looked into being hit by Section 25 of the Evidence Act.

7. Counsel for the State does not dispute the fact that apart from disclosure of Kuldeep Singh, there is no other incriminating evidence against the petitioner that locks to the offences punishable under NDPS Act.

8. While issuing notice of motion in both these matters, the petitioner was ordered to join investigation.

9. Mr. Aggarwal does not dispute that the petitioner has indeed joined the investigation.

10. In view of above, the interim orders dated 07.06.2023 and 27.07.2023 passed by this Court are made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C. and to comply with the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change

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his cell-phone number without permission of the trial Court.

(vii) The petitioner shall not in any manner try to delay the trial.

11. This order should not be treated as "blanket" order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

12. This order does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the petitioner.

13. The petitioner shall be deemed to be in custody for the purpose of Section 27 of the Evidence Act, 1872 in regard to a discovery of facts made in pursuance of information supplied by the petitioner in case the occasion arises.

14. It will be open to the police or the investigating agency to move this court for a direction under Section 439 (2) Cr.P.C. to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial.

15. Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

16. Disposed off accordingly.

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17. A photocopy of this order be placed on the file of other
connected case.

(PANKAJ JAIN)
JUDGE

02.11.2023
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Whether speaking/reasoned : Yes

Whether Reportable : No