

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-32217-2023

Date of Decision:-07.11.2023

Prabhjeet Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Gaurav Kalsi, Advocate for
Mr. Harchand Singh Bath, Advocate for the Petitioner.

Ms. Ramta K Chaudhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The Prayer in this petition under Section 439 Cr.PC is for the grant of regular bail in case FIR No.79 dated 17.03.2021 under Section 21, 29 of NDPS Act, 1985, Section 14 of Foreigners Act, 1946 and Section 3 of Indian Passport Act, 1920 registered at Police Station Ajnala, District Amritsar Rural.

2. The brief facts of the case are that while the BSF party was on patrolling duty, on a specific input a special ambush was laid in the area of D.S. Pura near the Indo-Pak border fence. The officials observed the suspected moments from the Pakistan side. They suspected smuggling and therefore, the area was marked for a search operation. After a thorough search the recovery of a Phoenix Battery concealed underground was effected. When the battery was opened white brown colour Heroin was recovered which on being weighed was found to be 6.770 Kgs.

After the registration of the FIR secret information was received that Heroin which was recovered from near the fence was to be received by 02 youngsters namely Vishal Sharma and Prabhjeet Singh (petitioner) who were waiting in a car near Surjit Hospital, Amritsar along with the money. If a raid was conducted they could be apprehended. The police party reached the spot but on seeing the police vehicle, the occupants of the vehicle drove away. The car was apprehended and on being asked, the occupants of the car disclosed their names as Prabhjeet Singh and Vishal Sharma. The recovery of Rs.15 lacs was effected from the vehicle.

During the course of the investigation, the disclosure statement of accused Vishal Sharma was recorded who disclosed that he had come in contact with one Satnam Singh who had moved to Malaysia. On the instructions of said Satnam Singh, he had become a party to the present occurrence for the sake of money. During investigation it also came to light that Satnam Singh in connivance with Pakistani smugglers had brought the Heroin.

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. Pursuant to his arrest, no recovery whatsoever had been effected from him. In the one other case one another case registered against him under the NDPS Act bearing FIR No.14 dated 20.01.2021 under Sections 21C, 25, 29 of the NDPS Act, 1985, Police Station STF, District SAS Nagar, Mohali he had been granted the concession of bail by this Court vide order dated 06.12.2022. Therefore, he was entitled to the grant of bail in this case as well. 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 and there is no other corroborative evidence against the accused.

4. He further contends that in the instant case the petitioner is in custody since 17.03.2021 and only 01 out of the 24 prosecution witnesses have been examined so far and, therefore, as the Trial of the present case was not likely to be concluded soon, he was entitled to the concession of bail. Reliance is placed on the judgments of the Hon’ble Supreme Court in the case of ***Nitish Adhikary @ Bapan Versus The State of West Bengal, SLP (Crl.) Nos.5769/2022 arising out of judgment and order dated 04.05.2022 in CRM(NDPS) No.442/2022, decided on 01.08.2022 and Hasanujjaman & others Versus The State of West Bengal, SLP (Crl.) No. (s).3221/2023 arising out of impugned final judgment and order dated 29.11.2022 in CRM(NDPS) No.1323/2022, decided on 04.05.2023.***

5. The learned counsel for the respondent-State, on the other hand, contends that in view of the serious allegations levelled against the petitioner and his co-accused he was not entitled to the grant of bail. The petitioner

was an accused in another case and, therefore, being a habitual offender, he was not entitled to the concession of bail. He however, admits that the petitioner is named in the disclosure statement of his co-accused and no recovery was effected from him. He also concedes that the petitioner was in custody since 17.03.2021, only 01 out of the 24 prosecution witnesses had been examined so far and that in the other case registered against him bearing FIR No.14 dated 20.01.2021 under Sections 21C, 25, 29 of the NDPS Act, 1985, Police Station STF, District SAS Nagar, Mohali he had been granted the concession of bail by this Court vide order dated 06.12.2022. .

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

7. 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)

8. The Hon'ble Supreme Court in the case of **Nitish Adhikary @**

Bapan Vs. The State of West Bengal SLP (Crl.) Nos.5769/2022 Decided on

01.08.2022 held as under:-

“As per the office report dated 29.07.2022, copy of the show cause notice along with Special Leave Petition was supplied to the Standing Counsel for the State of West Bengal and separate notice has been served on the State also. However, no one has entered appearance on their behalf.

The petitioner seeks enlargement on bail in F.I.R. No. 612 of 2020 dated 17.10.2020 filed under Section 21(c) and 37 of the NDPS 2 Act, registered at Police Station Bongaon, West Bengal.

During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner.

The petitioner is accordingly, directed to be released on bail subject to him furnishing bail bonds to the satisfaction of the Trial Court.

The Special Leave Petition is disposed of on the aforestated terms.

Pending application(s), if any, shall stand disposed of.”

9. In **Hasanujjaman & others Versus The State of West Bengal,**

SLP (Crl.) No.(s).3221/2023, decided on 04.05.2023, held as under:-

“1. There are three petitioners in this Special Leave Petition, who were accused of committing an offence under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘NDPS Act’) in FIR No.18/2022, dated 09.01.2022, registered at Police Station

Islampur, District Murshidabad, West Bengal.

2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. **They were arrested on the spot and have been in custody for more than one year and four months.**

3. We have heard learned counsel for the parties and carefully perused the record.

4. **The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial compliance of Section 37 of the NDPS Act.**

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.

6. Additionally, it is clarified that in case the petitioners are found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to them today, and in such a case, necessary consequences shall follow.

7. The petitioners are further directed to appear before the Trial Court regularly. In the event of they being absent, it shall again be taken as a misuse of concession of bail.

8. The Special Leave Petition stands disposed of in the above terms.

9. As a result, pending interlocutory application also stands disposed of.

(emphasis supplied)

10. 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 was no corroborative evidence other than the said disclosure statement. Further where the petitioner had undergone a substantial period of imprisonment (in this case more than 2-1/2 years) then the case of the petitioner can be considered for the grant of bail even though he is an accused in other cases in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy Trial.

11. In the instant case, the petitioner is named in the disclosure statement of his co-accused and no recovery whatsoever has been effected from him. He is stated to be in custody since 17.03.2021 and only 01 out of the 24 PWs has been examined so far. In this situation, the rigors of Section 37 of the NDPS Act can be diluted to an extent in view of the salutary provisions of Article 21 of the Constitution of India which provides for the right to a speedy trial and the case of the petitioner can be considered for the grant of bail even though he is an accused in another case under the NDPS Act.

9. Thus without commenting on the merits of the case, the present petition is allowed and the petitioner-**Prabhjeet Singh** son of Sh. Resham Singh 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. 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

November 07, 2023

Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No