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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision 28.08.2023

Surinder Singh @ Shinda

... Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C is for the grant of anticipatory bail in case bearing FIR No.158 dated 14.06.2023 under Section 15C and Section 29 (added later on) of the NDPS Act registered at Police Station Phillaur, District Jalandhar Rural.

2. The brief facts of the case are that while the police party was on patrolling duty, during checking, a truck bearing No.PB-08-EC-3854 was seen coming from Phillaur City. It was being driven by a Sikh person and one clean-shaven person was sitting on the adjoining seat. It was stopped and the driver disclosed his named as Daljeet Singh @ Jeeta and the person sitting on the adjoining seat disclosed his name as Parminder Singh @ Pinder. In the

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presence of an independent witness-Harmesh Lal, the recovery of 2520 kilos of poppy husk was effected from the truck, leading to the registration of the FIR.

Daljeet Singh @ Jeeta disclosed that the poppy husk had been brought by him in the truck on the asking of a person, namely, Surinder Singh @ Shinda (petitioner). He disclosed that he had been paid Rs.50,000/- per consignment by the petitioner and he (Daljeet Singh @ Jeeta) had further hired the co-accused Parminder Singh @ Pinder for bringing the poppy husk for which Parminder Singh @ Pinder had been paid Rs.12,000/- per consignment. Therefore, Surinder Singh @ Shinda (petitioner) was arrayed as an accused in the instant case and the offences under Section 29 of the NDPS Act were added.

On 20.06.2023, Daljeet Singh @ Jeeta disclosed that Balbir Singh @ Bittu, Mangal Singh, Shinderpal @ Bangali and Billu @ Naresh Kumar had taken the consignment of 20 bags each containing poppy husk from Surinder Singh @ Shinda (petitioner) on earlier occasions.

Therefore, Balbir Singh @ Bittu, Mangal Singh, Shinderpal @ Bangali and Billu @ Naresh Kumar were arrayed as co-accused in the present case vide DDR No.21 dated 20.06.2023. Later on, co-accused/Billu @ Naresh Kumar was arrested by the police on 21.06.2023 whereas the other accused are yet to be arrested.

On 24.06.2023, the investigating agency had received a tip-off that the petitioner was present near village Thamanwal, Police Station Bilga,

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District Jalandhar and was busy in agricultural activities. The investigating agency conducted a raid at the alleged place and the petitioner was rounded up by the police. However, he managed to escape from the spot with the help of tractor and his relative, namely, Surjit Singh. During the efforts made by the police to arrest him, the petitioner also tried to kill a police official, namely, Senior Constable Davinder Singh, posted at Police Station Bilga with the help of tractor. Therefore, another FIR No.64 dated 24.06.2023 under Sections 307, 332, 353, 186, 323, 506, 224, 148 and 149 IPC, Police Station Bilga, District Jalandhar came to be registered against the petitioner.

During the course of investigation, it transpired that truck bearing No.PB-08-EC-3854 was registered in the name of Baljit Singh, who is yet to be arrested.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case on the basis of a disclosure statement of his co-accused without any corroborative evidence whatsoever. Therefore, he was entitled to the concession of anticipatory bail. He placed reliance 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

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Versus The State of Haryana, bearing Special Leave to Appeal (Crl.) No. (s).1266/2023 decided on 17.05.2023 and Vikrant Singh Versus State of Punjab, CRM-M-39657-2020.

4. The learned counsel for the State, on the other hand, contends that the criminal antecedents and the conduct of the petitioner does not entitle him to the grant of anticipatory bail.

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

6. The Hon'ble Supreme Court in the case of ***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 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

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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]

7. 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

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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)

8. 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

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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

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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)

9. This Court in the case of **Ranjit Singh Versus State of Punjab, CRM-M-25526-2023, decided on 17.07.2023**, held as under:-

“8. Coming back to the facts of the present case, it is pertinent to note here that other than the instant FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of the arrested accused, the petitioner is also an accused in two other cases under the NDPS Act. In addition, he had been an accused in three other cases, though he has been acquitted in the said cases. It is highly unlikely that the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency.

9. When there are multiple FIRs against a person over a significant period of time (in this case 18 years), then even though he may have been acquitted in some of those cases, the twin conditions as envisaged under Section 37 of the NDPS Act that he has not committed an offence and was not likely to commit an offence cannot be satisfied.

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10. Keeping in view the conduct of the petitioner and his criminal antecedents, his custodial interrogation would certainly be necessary to effect necessary recoveries and to take the investigation to its logical conclusion.

11. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

(emphasized supplied)

10. In **Samarth Kumar** (supra) the Hon'ble Supreme Court had clearly held that an accused who had been named in the disclosure statement of a co-accused was not entitled to the grant of anticipatory bail but could be granted regular bail. However, in **Vijay Singh** (supra) a somewhat contrary view was taken and the accused therein was granted the concession of anticipatory bail even though he had been an accused in another case under the NDPS Act in which he was on bail. In **Vikrant Singh** (supra) this Court held that where an accused had been named in the disclosure statement of his co-accused and there were CDRs/WhatsApp calls/chats between the arrested accused and the person named in a disclosure statement then in the absence of the contents of the conversation/chats bail could not be denied to the said accused. In **Ranjit Singh** (supra) it has been held by this Court that where there were multiple FIRs against an accused over a period of time then, even though he had been named in a disclosure statement, he was not entitled to the concession of bail.

11. Coming back to the facts of the present case, it is relevant to mention here that other than the present FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of the arrested accused, the petitioner is also an accused in another FIR No. 52 dated 01.04.2021 under Section 15 of the NDPS Act, Police Station Dasuya, District

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Hoshiarpur, and has been acquitted in FIR No. 123 dated 03.10.;2013 under Section 15 of the NDPS Act, Police Station Bilga. It is highly unlikely that the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency. Further, when the police party reached the spot to arrest him, he tried to run over a police official leading to the registration of FIR No.64 dated 24.06.2023 under Sections 307, 332, 353, 186, 323, 506, 224, 148 and 149 IPC, Police Station Bilga.

12. In fact, when there are multiple FIRs against an accused over a significant period of time, then the twin conditions as envisaged under Section 37 of the NDPS Act that he had not committed an offence and was not likely to commit an offence cannot be satisfied.

13. Keeping in view the conduct of the petitioner and his criminal antecedents, his custodial interrogation would certainly be necessary to effect necessary recoveries and to take the investigation to its logical conclusion.

14. In view of the above, I find no merit in the present petition. Therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 28, 2023

sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No