

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

CRM-M-38028-2023

Date of Decision:-09.08.2023

Sumit Kumar @ Sumit Sheoran.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

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

Present:- Mr. Preetinder S. Ahluwalia, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, AAG 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.60 dated 06.06.2022 under Sections 18(c), 27 and 29 of NDPS Act and Section 201 of Indian Penal Code registered at Police Station Bahavwala, District Fazilka.

2. The brief facts of the case are that while the police party was on patrolling duty a *nakabandi* was set up. A car bearing registration number RJ-148C-1249 make Santro was seen coming from the side of Rajasthan and was signalled to stop. The driver of the car got perplexed and tried to take a U-Turn. However, the car was stopped and the driver disclosed his name as Moti Ram. After complying with the mandatory provisions of the Act regarding search and seizure, 07 Kgs of Opium came to be recovered from the Moti Ram. During the course of investigation, Abhimanyu (granted bail by Special Court, Fazilka vide order dated 15.07.2022), Raj Kamal (granted bail by Special Court, Fazilka vide order dated 19.07.2022), Pardeep Punia (granted bail by Special Court, Fazilka vide order dated 28.09.2022), Dharamveer (granted bail by Special Court, Fazilka vide order dated 16.09.2022), Sumit (petitioner), Sandeep Fauji (granted bail vide order dated 15.07.2022), Sandeep Sarpanch (untraceable), Rajan Setia (granted

anticipatory bail vide order dated 04.07.2022) and Pardeep Saharan (since granted anticipatory bail vide order dated 06.12.2022) came to be named in the said disclosure statement.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He contends that the name of the petitioner figures in the disclosure statement of his co-accused Moti Lal. Pursuant to his arrest, no recovery whatsoever has been effected. 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* and *Vikrant Singh Versus State of Punjab, CRM-M-39657-2020*. 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. He contends that there was absolutely no admissible evidence connecting the petitioner to the arrested accused. Even otherwise five of the co-accused of the petitioner who are similarly situated have been granted the concession of regular bail by the Special Court and two co-accused namely Rajan Setia and Pardeep Saharan are on anticipatory bail.. As the petitioner was in custody since 28.04.2023 and a first time offender, he was entitled to the concession of bail more so when his co-accused had been granted the similar concession.

4. The Counsel for the State on the other hand contends that the petitioner was in conspiracy with the arrested accused and his name has figured in the disclosure statement of his co-accused. There was also evidence of financial transaction between the arrested accused and the petitioner. Therefore, he was not entitled to the concession of bail. He however concedes that the petitioner is a first time offender, in custody since 28.04.2023. He also admits that all the co-accused of the petitioner have

either been granted the concession of regular bail or anticipatory bail even though in those case as well there was evidence of financial transactions with the arrested accused.

5. I have heard learned Counsel for 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 apparently the petitioner is named in the disclosure statement of his co-accused. Other than the said disclosure statement there is no corroborative evidence connecting the petitioner to the arrested accused. Further, none of the prosecution witnesses have been examined so far and, therefore, the Trial of the present case is not likely to be concluded anytime soon. The similarly situated co-accused have been granted the concession of either anticipatory bail or regular bail. Therefore, the further incarceration of the petitioner is not required as a *prima facie* satisfaction under Section 37 of the NDPS Act 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-**Sumit Kumar @ Sumit Sheoran** son of Sh. Bhupinder Singh is ordered to be released on bail subject to her 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 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.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 the trial without sufficient cause.

12. The petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 09, 2023

Vinay

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