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

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Date of Decision: 06.12.2023

YOGENDER

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Kanwal Preet Singh Virk, Advocate with
Mr. Parvesh Malik, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C is for the grant of regular bail in case bearing FIR No.304 dated 16.08.2022 registered under Sections 20(b)(ii)(c) of NDPS Act (Sections 27(a) and 29 of the NDPS Act added later on) at Police Station Badshahpur, District Gurugram.

2. The brief facts of the case are that while the police party was on patrolling duty, secret information was received that Pammi wife of Arun Kumar and Chaitram son of Mangal Singh had built many rooms in Fazilpur Ki Dhani and had given those rooms on rent. Out of these rooms, Arun's wife Pammi had also kept a room on rent on the first-floor in which a large amount of Ganja was kept. The same was to be sold. If a raid was conducted, she could be nabbed along with Ganja.

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Based on the said information, the raiding party was prepared and reached Fazilpur Ki Dhani Village. One lady was overpowered who disclosed her name as Pammi. A white bag being carried by her was found to contain Ganja. She stated that more Ganja had been kept in a rented room. In the said room, two plastic bags were found containing Ganja. A total of 47 Kgs 90 grams Ganja was recovered.

Pammi was arrested on 16.08.2022 and her disclosure statement was recorded.

Accused Arun Kumar was arrested on 21.09.2022 and his disclosure statement was recorded. He got recovered the transaction slip of transfer of Rs.1,30,000/- in the Account No.33303515457 and his Aadhar Card. He got demarcated the place of occurrence from where he had taken Ganja from Mohit @ Lala.

Accused Mohit @ Lala was arrested on 23.09.2022 and his disclosure statement was recorded and he got demarcated the place where he had handed over 50 Kgs Ganja to accused Arun. The bank statement of Account No.333035155452 was obtained. The said account was found in the name of Devender Pal Singh (granted bail vide order dated 08.11.2023 passed in CRM-M-46969-2023). In the said account, accused Arun Kumar had transferred an amount of Rs.1,30,000/- for the purchase of Ganja. On 04.11.2022, the ID CAF and call details of Mobile Nos.7042189304, 8950006081 and 9416901660 were obtained. Mobile No.9416901660 belonged to the complainant-SI Balwant. The mobile No.7042189304 was found in the name of Ravita and was being used by accused Arun Kumar. The calls were made from aforementioned mobile numbers to mobile

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No.9991043821 of accused Mohit @ Lala on 13.08.2022 and 15.08.2022. Mobile No.8950006081 was in the name of Devender Pal Singh. The accused Mohit @ Lala had been found to have conversed with the said mobile number on 14.08.2022 and 18.08.2022. The CDR and ID CAF of Mobile Nos.8930930067, 9991043821 and 9540613108 were also obtained. Mobile No.9540613108 belonged to the Duty Magistrate i.e. Anil Kumar, Deputy Director, Agriculture Department, Gurugram in whose presence the search was conducted. The Mobile No.8930930067 belonged to Rajesh wife of Mangat Ram which was being used by accused Yogender @ Monu (petitioner). The Mobile No.9991043821 belonged to accused Mohit @ Lala and was found to have been in contact with Arun Kumar and Devender Pal Singh. The tower locations of the mobile numbers were obtained and the locations were found to be near the KMP Flyover, Bahadurgarh-Rohtak Road i.e. the place where Ganja was handed over by the accused to Arun Kumar.

Devender Pal Singh and petitioner-Yogender @ Monu were arrested on 22.12.2022. The vehicle No.HR-18-D-8887 was taken into police possession. Devender Pal Singh got recovered a mobile phone used by him in the supply of Ganja and an amount of Rs.7,000/- out of the sale amount of Ganja. Yogender @ Monu got recovered a mobile phone used by him and an amount of Rs.13,000/- out of the sale amount of Ganja. They also recovered a Swift Dzire bearing No.HR-55-AH-0757 used in the present case.

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 figured in the disclosure statement of his co-accused namely, Mohit @ Lala. Pursuant to his arrest, Rs.13000/- came to be recovered from

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him. The evidence of call detail records would not further the case of the prosecution in the absence of any transcripts of the conversation. 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. As the petitioner was a first-time offender, in custody since 22.12.2022 and none of the 31 prosecution witnesses had been examined so far, he was entitled to the concession of bail.

4. The learned counsel for the State, on the other hand, contends that in view of the serious nature of allegations levelled against the petitioner, he was not entitled to the concession of bail. While admitting that the petitioner was named in the disclosure statement of his co-accused and that no recovery of any contraband has been effected from him, he contends that there was a recovery of Rs.13000/- from the petitioner. Further, there was evidence in the shape of CDRs to suggest that the petitioner was in contact

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with the other accused. He, however, concedes that the petitioner was a first-time offender, in custody since 22.12.2022, none of the 31 prosecution witnesses had been examined so far and that co-accused Devender Pal Singh had been granted bail.

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

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 evidentiary value of the CDRs shall be adjudicated upon during the course of Trial. The co-accused of the petitioner has been granted bail. The petitioner is a first-time offender, in custody since 22.12.2022 and none of the 31 prosecution witnesses have been examined so far. Therefore, the Trial in the present case will not conclude 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-Yogender son of Ajit 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 case.

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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

06.12.2023
JITESH

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