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(219)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of Decision:20.04.2024

UDAY LAL DANGI

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Parveen Aggarwal, DAG, Haryana.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 BNSS, 2023 is for the grant of anticipatory bail in case bearing FIR No.168 dated 19.04.2024 registered under Sections 15(c)/29 of NDPS Act, 1985 at Police Station Dabwali Sadar, District Dabwali.

2. The brief facts of the case are that Hoshiar Singh son of Shri Bhawar Singh and Gyarsi Lal @ Garsi Lal son of Surja Ram were apprehended while they were driving a trucking bearing No.RJ-09GC/0219 along with 70 Kgs poppy husk.

3. The arrested accused Hoshiar Singh and Gyarsi Lal @ Garsi Lal named one Gobind Singh @ Gobindo son of Mamraj Singh @ Mamra as the person who had handed over the truck along with the contraband to them.

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On 02.06.2024, Gobind Singh @ Gobindo son of Mamraj Singh @ Mamra was arrested. On 03.06.2024, he suffered his disclosure statement admitting to have committed the offence in question. He suffered yet another disclosure statement demarcating the place where accused Hemraj @ Pappu handed over truck bearing No.RJ-09GB/4653 along with the contraband and where he loaded the contraband from Rajasthan to truck bearing No.RJ-09GB/4653 due to the technical fault in truck bearing No.RJ09-GC/0219. He also got recovered Rs.10,000/- from his house.

During investigation it came on record that Uday Lal Dangi (petitioner) and Hemraj @ Pappu were indulging in the sale, purchase and transportation of the narcotics substances along with the other accused. It also transpired that both the trucks were registered in the name of the petitioner and that Gobind used to transport the contraband on the asking of the petitioner and Hemraj @ Pappu thus, establishing that the accused persons were running a syndicate dabbling in the business of narcotics substances where the petitioner, Hemraj @ Pappu were the main suppliers.

4. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. He has not been named in the FIR but only in the disclosure statement of some of the arrested accused which had no evidentiary value. Merely because the vehicles were in his name did not establish his culpability as the drivers were dealing in



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contraband in their individual capacity. As the petitioner was ready and willing to join investigation, he was entitled to the concession of bail. 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*.

5. A reply dated 17.08.2024 by way of an affidavit of Kishori Lal, Deputy Superintendent of Police, Sadar Dabwali, Sirsa has been filed on behalf of the State by the learned counsel for the State. The same is taken on record. He contends that both the vehicles used in the commission of the offence stand in the name of the petitioner. It does not stand to reason that the petitioner was unaware of the action of his co-accused/drivers. During the course of investigation it had come on record that the petitioner was the main accused along with one Hemraj @ Pappu. Further, he was a habitual offender



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as was from the chart (Annexure R-2). Therefore, in view of the material available on record, he was not entitled to the concession of bail.

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

7. 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 therefore, nothing survives in the appeal. But, we do not agree.



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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]

8. 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



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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)

9. 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



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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



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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)

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



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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.

11. However, in the instant case, there is sufficient corroboratory evidence other than the disclosure statements inculcating the petitioner in the commission of the offence inasmuch as both the offending vehicles stand registered in the name of the petitioner.

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

(JASJIT SINGH BEDI)
JUDGE

20.04.2024

JITESH

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