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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-52788-2024
Date of decision: 12.11.2024

Rajni Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Manjinder Singh Saini, Advocate for the petitioner.

Mr. P.S. Bhandari, AAG, Punjab along with
ASI Nishan Singh.

VIKAS BAHL, J. (ORAL)

1. This is the second petition filed under Section 439 of Cr.P.C. for grant of regular bail to the petitioner in case FIR No.84 dated 15.04.2022 registered under Sections 22, 29 of the NDPS Act, 1985 at Police Station Sadar Samana, District Patiala.
2. Learned counsel for the petitioner has submitted that the petitioner was not named in the FIR and no recovery has been effected from him and the alleged recovery has been effected from two persons i.e., Makhan Singh and Rimpay and the petitioner has been implicated in the present case solely on the basis of disclosure statement of the said co-accused which has been made before the police. Learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme



Court in *Tofan Singh Vs. State of Tamil Nadu*, reported as *2021(1) RCR (Criminal) 1*, and order passed by Coordinate Bench of this Court dated 17.06.2020 in CRM-M-12051-2020 titled *“Mewa Singh Vs. State of Punjab”*, to contend that the statement made before the Police is inadmissible in evidence. It is further submitted that the co-accused of the petitioner i.e., Rimpay and Makhan Singh have been granted the concession of regular bail vide order dated 31.07.2024 passed in CRM-M-9091-2024 and order dated 21.11.2023 passed in CRM-M-56320-2023 respectively. It is submitted that even after the arrest of the petitioner, no recovery has been effected from him and that he is in custody for the last more than five months and 6 days and there are 21 witnesses out of which only four witnesses have been examined and thus, the conclusion of trial is likely to take time.

3. Learned State Counsel, on the other hand, has opposed the present petition for grant of regular bail to the petitioner and has submitted that in addition to the disclosure statement of the accused from whom the recovery has been effected, the challan also contains the details of the phone calls between the said persons and the present petitioner which also shows that there was a link between the petitioner and accused persons from whom the recovery has been effected.

4. Learned counsel for the petitioner, in rebuttal, has submitted that admittedly, there is no transcript of the said call details and has relied upon the judgment of the Division Bench in *CRM-A-1065-MA of 2016 – Narcotics Control Bureau Vs. Sandeep*, decided on 01.08.2018 as well as the judgment of the Gujarat High Court reported in *Yash Jayeshbhai*



Champaklal Shah Vs. State of Gujarat, 2022 SCC Online Guj 271, to contend that where there are no recordings of conversations exchanged between the accused, then the same cannot be treated as corroborative material in absence of substantive material found against the accused. Reliance has also been placed on judgment of the Hon'ble Supreme Court in **Bharat Chaudhary Vs. Union of India – 2021 SCC Online SC 1235**, to argue that reliance placed on Whatsapp messages cannot be treated as sufficient material to establish a live link between the accused in the case when most of the scientific reports with respect to the said evidence are still awaited.

5. This Court has heard learned counsel for the parties and perused the record.

6. It is not in dispute that the petitioner has not been named in the FIR and no recovery has been effected from her and the alleged recovery has been effected from Makhan Singh as well as Rimpay who both have been granted regular bail vide order dated 21.11.2023 and 31.07.2024 (Annexures P-5 and P-6) respectively. The petitioner is in custody for the last more than five months and 6 days as per the custody certificate and challan has been presented and there are 21 witnesses out of which only four witnesses have been examined and thus, the conclusion of trial is likely to take time. Even after the last bail application of the petitioner having been dismissed as withdrawn at that stage on 24.07.2024, the trial has not made much progress and is not likely to be concluded in the near future. The petitioner who is a lady, is sought to be implicated on the basis of the disclosure statement of co-accused from whom the recovery has been



effected. As per the law laid down by the Hon'ble Supreme Court in the case of **Tofan Singh** (Supra), the statement made before the police is inadmissible in evidence unless corroborated otherwise. With respect to call details, it would be relevant to observe that admittedly there is no transcript of the said conversations. 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 petitioner.

7. Keeping in view the above-said facts and circumstances, as well as law laid down in the judgments noticed hereinabove, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate and subject to her not being required in any other case.

8. However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

12.11.2024
Pawan

(VIKAS BAHL)
JUDGE

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