

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

CRM-M-61806-2023

Date of Decision:-08.02.2024

Surender @ Sarpanch.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

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

Present:- Dr. Pankaj Nanhera, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant Advocate General,
Haryana.

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.161 dated 03.05.2022 under Sections 20(C), 27-A, 29, 68-F of the NDPS Act, 1985 registered at Police Station Ferozpur Jhirka, District Nuh.

2. The brief facts of the case are that secret information was received to the effect Ansar and Mormal (since granted bail vide order dated 11.01.2024 passed in CRM-M-22038-2023) were in the business of supplying Ganja and would be travelling in a vehicle bearing registration number HR-74A-8269 make Canter from Ferozpur Jhirka towards Sohna and if a barricade was set up they could be apprehended.

Based on the aforementioned information a barricade was set up and the vehicle was intercepted. The driver of the vehicle disclosed his name

as Ansar and the cleaner as Mormal. 200Kgs of black ash was found loaded in the said truck. However, on investigation the arrested accused disclosed that the contraband had been dropped in a dry dug well in village Sakras. The truck driver and cleaner were taken to the dug well and 10 bags of cannabis were recovered totalling 313 Kgs 100 grams Cannabis (Ganja). Ansar and Mormal were arrested in the present case.

Both the arrested accused were interrogated on 13.07.2022. They disclosed the names of their co-accused. On the basis of the statement under Section 161 Cr.PC of PWs Ajit and Ajay the vehicle involved in the crime was found to have been taken on rent by accused Surender @ Sarpanch (petitioner). He was summoned on the basis of production warrants. The bank accounts of Surender Sarpanch and his wife were seized and revealed huge transactions of payments and withdrawal in connection with the illegal and unlawful business of narcotics and contraband. Vehicle no.HR-74-A 8269 was found to be owned by Wahid who had given the same to accused Surender @ Sarpanch on rent at the rate of Rs.1 lac per month.

Surender @ Sarpanch was in judicial custody in case FIR No.40 of 2021 under the NDPS Act P.S. Bilasur, District Gurugram. He was summoned on production warrants and joined in the investigation. He got recovered two mobile phones and one dongle after which Section 27-A of the NDPS Act was added on the examination of the bank account of the accused.

The aforementioned accused also disclosed about the involvement of Sanjiv Shah resident of Bihar presently residing at Delhi, Anwar resident of Orissa, Parveen @ Gora, Subash, Rahul, Sandeep and Mallu @ Nitin.

Parveen was arrested on 31.07.2022 and admitted that the accused Rahul and Subash were with him when he visited Orissa to bring the contraband.

Co-accused Sanjiv Shah was arrested on 01.08.2022 and got recovered an Aadhar Card, driving licence, ATM Cards, PAN Cards and Rs.20,800/-. He also got recovered two mobiles phones used in the commission of crime and vehicle no.DL-12-CM-80852 along with a travel bag with jewellery of gold and silver.

Anwar Khan was arrested on 05.08.2022 and got recovered 02 mobile phones. He also disclosed that he had handed over the vehicle with the contraband to the co-accused Parveen and his co-accused.

During the course of investigation, it transpired that the accused Parveen and Nitin @ Mallu were bringing the canter bearing no.HR-74A-8269 when it was snatched by Ansar, Mormal and the co-accused. Cannabis weighing approximately 600Kg was taken away by the co-accused who were yet to be arrested and the canter bearing no.HR-74A-8269 was being brought to Mewat by accused Mormal and Nitin @ Mallu who were apprehended by the CIA Police Tauru.

Wahid, Ishrar, Sahid Ahmed, Anish, Ikrum, Nitin @ Mallu, Mohd. Sakir and Mustkim are yet to be joined in investigation 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. Pursuant to his arrest, no recovery of any contraband have 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 & 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 is in custody since 28.07.2022, 04 out of the 44 prosecution witnesses had been examined so far, and in the one other case registered against him vide FIR No.04 dated 04.01.2021 under Sections 20B(ii)(C) of the NDPS Act, Police Station Bilaspur, Gurugram, he had been granted the concession of regular bail, he was entitled to the concession of bail in this case as well.

4. The Counsel for the State has filed a reply dated 07.02.2024 by way of an affidavit of Mr. Kaptan Singh, Deputy Superintendent of Police, Firozpur Jhirka, Nuh, which is taken on record. While referring to the said reply, he contends that in view of the serious allegations levelled against the petitioner, he was not entitled to the grant of bail. He, however, admits that the petitioner is named in the disclosure statement of his co-accused and no recovery was effected from him. He also concedes that the petitioner is in custody since 28.07.2022, 04 out of the 44 prosecution witnesses have been examined so far and in the one other case registered him, he had been granted the concession of 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 co-accused, 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 recovery from him on his arrest and the CDRs do not disclose the actual conversation that transpired between the accused from whom the recovery was effected and the one named in the disclosure statement.

8. In the instant case, the petitioner is named in the disclosure statement of his co-accused. He is in custody since 28.07.2022 and 04 out of the 44 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-**Surender @ Sarpanch** son of Sh. Sedu Ram 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 one.

11. 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

February 08, 2024
Vinay

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