IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-65094-2024

Date of decision: 14.01.2025

Anshul Sardana

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Vishal Jassal, Advocate and
Mr. Hemant Kumar, Advocate for the petitioner.

Mr. Neeraj Madan, Senior DAG Punjab.

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SUMEET GOEL, J.

1. Present petition has been filed under Section 483 of BNSS, 2023 seeking grant of regular bail to the petitioner in FIR No.134 dated 26.06.2021, under Sections 22/29/61/85 of the NDPS Act, registered at Police Station Dirba, District Sangrur.

2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:

> *"Copy of ruqa. Station House Officer Police Station Dirba. Fateh. Today myself Assistant Sub Inspector alongwith Senior Constable Naib Singh 1730/ Sangrur, C-2 Sandeep Singh 989/ Sangrur and were on government vehicle no. PB13BE3707 and driver thereof is Assistant Sub Inspector Jaswinder Singh 2463/ Sangrur and were accompanied with laptop, printer and inverter. We were on patrolling and checking of suspected persons and were present at Patra Dirba Main Road, Near Bridge in the area of Karyal. It will be 2 PM that a motorcycle rider hair cut person and a black colour polythene was tied around the right hand of his motorcycle. He was seen coming from the side of Village Karyal through the passage of canal leading from Patra-Sangrur. When myself ASI given him signal to stop, the above said person became nervous and has thrown the black colour plastic polythene down from the right hand of the motorcycle. He*

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tried to run away his motorcycle, but the motorcycle was suddenly stopped. Myself Assistant Sub Inspector alongwith accompanied employees have nabbed him and enquired about his name and address. He has told his name as Kulvir Singh son of Mohan Singh son of Sandha Singh resident of Karyal Police Station Dirba District Sangrur. The grey colour TV Radeon motorcycle is bearing no.PB13BH9729. When the black colour polythene, which was thrown have been seen the strips of intoxicant tablets Roldal 100 SR (Tramadol) and Alprasafe were clearly seen. The above said Kulveer Singh has kept strips of intoxicant tablets Roldal 100 SR (Tramadol) and Alprasafe in his custody, therefore, he has committed offence under section 22/61/85 of NDPS Act. at 2:30 PM, myself Assistant Sub Inspector has informed Sastnam Singh Incharge, C.I.A Bahadur Singh Wala about the facts of case and required that as per the directions of Hon'ble Supreme Court, either you may come on the spot or to send some competent officer. He aid that Assistant Sub Inspector Jaswinder Singh No. 2119/ Sangrur and Assistant Sub Inspector Amritpal Singh 653, who have already came towards the side of Police Station Dirba for some official work are being sent before your. Myself Assistant Sub Inspector ha sent writing through C-2 Sandeep Singh 989/ Sangrur to Police Station Dirba for registration of FIR against Kulvir Singh son of Mohan Singh son of Sandha Singh resident of Karyal Police Station Dirba District Sangrur. FIR be registered and number of FIR be informed. Control room Sangrur be informed. I alongwith police paryt is waiting for Assistant Sub Inspector Jaswinder Singh 2119/ Sangrur on the spot. In the area of Patra Dirba Main Road, near Canal Bridge in the area of Village Karyal. At 3 PM. Sd. Assistant Sub Inspector Jagtar Singh No. 220/ Sangrur. C.I.A Bahadur Singh wala dated 26.06.2021. Mobile No. 8054601620, Latitude 30.040839 Longitude 76.012113. Upon receipt of writing in the Police Station, FIR has been registered under the above said offences against the above said accused. Record has been entered. Original writing alongwith case file has been sent through same C-2 Sandeep Singh 989/ Sangrur on the spot. Incharge control room Sangrur is being informed through email."

3. Learned counsel for the petitioner has iterated that the story put forth by the prosecution is highly implausible, concocted and fabricated just to implicate the petitioner in a false case. Learned counsel has further

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iterated that the petitioner is not named in the FIR and has been implicated solely on the basis of disclosure statement of a co-accused, which is inadmissible under Section 25 of the Indian Evidence Act. Moreover, the disclosure statement of the co-accused has been deliberately and improperly fabricated by the investigating agency while the petitioner has no involvement whatsoever in the alleged incident. Furthermore, there is no material on record to connect the petitioner with the alleged recovery and the petitioner has been falsely implicated in the instant case. According to learned counsel, the misuse of the procedural safeguards and reliance on inadmissible evidence highlights the malicious intent behind the action of the prosecution and warranting interference by this Court to release the petitioner from unjustified detention. It has been further submitted that the alleged recovery was not made from the petitioner but from some other persons. Based on the allegations outlined in the FIR, it is contended that no case is made against the petitioner, and the prosecution's narrative appears to be an attempt to falsely implicate the petitioner. The learned counsel further maintains that the entire prosecution case relies on the testimony of official witnesses, raising doubts about the credibility of the prosecution's account. Lastly, it has been submitted that the similarly placed co-accused have already been granted the concession of regular bail by this Court. Therefore, based on the principle of parity alone, the petitioner should be granted bail during the pendency of the trial.

4. *Per contra,* learned State counsel has strenuously opposed the instant petition by arguing that the allegations against the petitioner are serious in nature. Learned State counsel has further submitted that the FIR in

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question pertains to recovery of 2050 intoxicant tablets of Roldal-100 SR having salt Alprazolam (commercial quantity) and, therefore, the bar under Section 37 of the NDPS, 1985 is attracted. Furthermore, expressing concerns about the possibility of the petitioner fleeing from the trial proceedings, learned State counsel submits that petitioner ought not be granted the concession of regular bail. Learned State counsel has filed the custody certificate dated 09.01.2025 and has relied upon the involvement of the petitioner in 01 other case under the NDPS Act. He has, accordingly, sought for dismissal of the petition in hand.

5. I have heard learned counsel for the rival parties and have perused the available record.

6. At this juncture, it would be apposite to refer herein to a judgment passed by the Hon'ble Supreme Court titled as ***'Tofan Singh vs. State of Tamil Nadu, AIR 2020 Supreme Court 5592'***, relevant whereof reads as under:

> *"155. We answer the reference by stating:*
>
> *(i) That the officers who are invested with powers under section 53 of the NDPS Act are "police officers within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act*
>
> *(ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS ACL"*

More recently, the Hon'ble Supreme Court in a judgment titled as '***Smt. Najmunisha, Abdul Hamid Chandmiya @ Ladoo Bapu Vs. State of Gujrat, Narcotics Control Bureau' 2024 INSC 290'***, has reiterated the

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ratio decidendi of the judgment of Hon'ble Supreme Court in the case of Tofan Singh (supra).

6.1 Further, the Hon'ble Supreme Court; while dealing with a plea for bail in a case under NDPS Act, 1985; in a judgment titled as '***State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.', 2022(1) RCR (Criminal) 762,*** has held as under:-

> *"9. Having gone through the records alongwith the tabuluted statement of the respondents submitted on behalf of the petitioner-NCB and on carefully perusing the impugned orders passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569/2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act*
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> *10 It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of un offence under the NDPS Act. In the teeth of the aforesaid decision, the arresis made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the*

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Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless."

6.2 Still further, the Hon'ble Supreme Court; while dealing with a plea for grant of bail in a case under NDPS Act, 1985; in a judgment titled as ***'Vijay Singh vs. The State of Haryana, bearing Special Leave to Appeal (Crl.) No.(s) 1266/2023*** decided on 17.05.2023', has 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."

6.3 It is a well established principle of law that a confession made by a co-accused under Section 67 of the NDPS Act is inherently a very weak piece of evidence. Such statement(s), by themselves, cannot form the sole basis for the conviction of an individual and must be scrutinized with utmost caution in conjunction with other substantive evidence. Moreover, no recovery has been effected from the possession of the petitioner, who has been subsequently implicated as an accused solely on the basis of disclosure statement of the co-accused. However, as regular bail pertains to life and

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liberty of individual, Courts are obligated to strike a balance between safeguarding personal liberty and ensuring the effective administration of justice as also investigation. The final evidentiary value and admissibility of the disclosure statement made by a co-accused fall within the domain of the trial Court and are to be adjudicated during the course of the trial in accordance with established principles of law. However, while adjudicating a plea for regular bail, this Court cannot remain oblivious to the circumstances under which the petitioner has been arraigned or implicated, including the nature of the allegations, the evidence linking the petitioner to the offence as well as the specific role attributed to the petitioner in the commission of the alleged offence. A prima facie examination of these factors is essential to ensure that the process of law is not misused, abused or misdirected.

7. The petitioner has been implicated as an accused in the FIR in question solely on the basis of the disclosure statement of a co-accused, who is alleged to have supplied the contraband to the accused namely Kulvir Singh. Subsequently, on 01.09.2024, the petitioner was apprehended during the course of further investigation. As per the prosecution version, there is no other material available to connect the petitioner with the contraband in question. It is pertinent to note that such disclosure statements, in the absence of corroborative evidence hold limited evidentiary value and cannot be sole basis for implicating the petitioner. The reliance on this unsubstantiated statement raises serious doubts about the fairness and objectivity of the investigation. It is not in dispute that the petitioner was not present at the spot. The veracity and weightage required to be attached to the

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disclosure statement made by the co-accused will be fully tested at the time of trial. However, the same cannot be construed as sufficient by itself to decline the concession of regular bail to the petitioner.

8. The petitioner was arrested on 31.08.2024 whereinafter investigation was carried out and challan stands presented on 28.11.2024. Charges in the trial in question were framed and total 21 prosecution witnesses have been cited, out of which only 03 have been examined till date. It appears that the trial is procrastination & there appears to be no chance of its culmination in near future. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question on the basis of disclosure statement of co-accused & the weightage/veracity of the evidence brought by the prosecution alongwith challan (final report); are issues of contentious nature which are essentially required to be ratiocinated upon during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the remaining prosecution evidence. Moreover, the co-accused in the case have already been extended the concession of regular bail by this Court as per order dated 08.03.2022 and 21.07.2023 respectively (Annexure P-3).

The petitioner is stated to be involved in one other case under NDPS Act, 1985 but, in the considered opinion of this Court, the factum of petitioner being involved in other criminal case would not be a reason, sufficient by itself, to decline the concession of regular bail to the petitioner

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qua the FIR in question especially when the petitioner has been able to make out a case for grant of regular bail in the FIR in question on merits thereof.

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

9. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. concerned trial Court/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned trial Court/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

(i) The petitioner shall not mis-use the liberty granted.

(ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.

(iii) The petitioner shall not absent himself on any date before the trial.

(iv) The petitioner shall not commit any offence while on bail.

(v) The petitioner shall deposit his passport, if any, with the trial Court.

(vi) The petitioner shall give his cellphone number to the Investigating Officer/SHO of concerned Police Station and shall not change his cell-phone number without prior permission of the trial Court/Illaqa Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.

10. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned trial Court/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State shall be at liberty to move cancellation of bail of the petitioner.

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11. Ordered accordingly.

12. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

13. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

January 14, 2025
Ajay

Whether speaking/reasoned: Yes
Whether reportable: Yes

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