

Rinku Singh @ Gagan vs State Of Punjab on 9 January, 2024

Author: Jasjit Singh Bedi

Bench: Jasjit Singh Bedi

Neutral Citation No:=2024:PHHC:002286

CRM-M-766-2024

2024:PHHC:002286

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-766-2024

Date of Decision: 09.01.2024

RINKU SINGH @ GAGAN

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. P.S. Sekhon, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 438 Cr.P.C is for the grant of anticipatory bail in case bearing FIR No.02 dated 05.01.2023 registered under Sections 15 and 29 of the NDPS Act, 1985 and Sections 353, 332, 333, 186 IPC at Police Station Khanauri, District Sangrur.

2. Harwinder Singh @ Mintu son of Pappi Singh, Krishan Singh son of late Gurmeet and Jaswant Kaur came to be apprehended and the recovery of 150 Kgs of poppy husk came to be effected from them.

During interrogation, Harwinder Singh @ Mintu disclosed that the recovered contraband of poppy husk was to be delivered/sold to the petitioner-Rinku Singh @ Gagan and that the petitioner had deposited an amount of Rs.1,32,000/- in his (Harwinder Singh @ Mintu's) Account No.101700001457 with the Punjab National Bank on 26.12.2022.

The petitioner was nominated as an accused and the statement of the bank account No.101700001457 of Harwinder Singh @ Mintu was taken 1 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 into possession which reflected that Rs.1,32,000/-

had been deposited in the said account on 26.12.2022.

After the completion of the investigation, the report under Section 173 Cr.P.C. was presented against the arrested accused.

3. The learned counsel for the petitioner contends that in the instant case, the petitioner has been named in the disclosure statement of his co-accused. As he has been named in the disclosure statement alone without any corroborative evidence, he was entitled to the concession of anticipatory 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.

4. On the other hand, the learned State counsel has referred to a list of 21 cases pending/registered against the petitioner, the details of which are as under:-

Sr. No.	Details of FIR(s)	Status
1.	FIR No.40 dated 10.05.2013 U/s 61 of Excise	Convicted on 31.05.2014

Act, Police Station Sherpur, District Sangrur.

2. FIR No.101, dated 26.10.2013, U/s 61 of Convicted on 21.03.2015 2 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 Excise Act, Police Station Sherpur, District Sangrur.

3. FIR No.31, dated 01.04.2008, U/s 61 of Excise Convicted on 18.08.2009 Act, Police Station Sherpur, District Sangrur.

4. FIR No.95, dated 28.11.2015, U/s 61 of Excise Challan presented on Act, Police Station Sherpur, District Sangrur. 09.11.2020

5. FIR No.81, dated 13.12.2017, U/s 61 of Excise Yet to be arrested Act, Police Station Badali Singh Wala

6. FIR No.36, dated 03.05.2016, U/s 61 of Excise Convicted on 09.12.2017 Act, Police Station Sherpur, District Sangrur.

7. FIR No.75, dated 27.02.2016, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur

8. FIR No.1, dated 05.01.2014, U/s 15 of NDPS Convicted Act, Police Station Joga.

9. FIR No.37, dated 05.04.2018, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur.
10. FIR No.92, dated 29.07.2018, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur.
11. FIR No.151, dated 09.11.2019, U/s 61 of Trial is pending Excise Act, Police Station Sherpur, District Sangrur.
12. FIR No.113, dated 09.09.2019, U/s 61 of Trial is pending Excise Act, Police Station Sherpur, District Sangrur.
13. FIR No.186, dated 11.12.2019, U/s 15 of Trial is pending NDPS Act, Police Station Sherpur, District Sangrur
14. FIR No.51, dated 30.07.2023, U/s 61 of Excise Yet to be arrested Act, Police Station Sherpur, District Sangrur.
15. FIR No.155, dated 31.08.2017, U/s 61 of Yet to be arrested Excise Act, Police Station City Sunam, District Sangrur.
16. FIR No.24, dated 21.01.2018, U/s 61 of Excise Trial is pending 3 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 Act, Police Station Rajpura, District Patiala.
17. FIR No.79, dated 09.07.2018, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur.
18. FIR No.75, dated 26.06.2019, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur.
19. FIR No.22, dated 22.03.2021, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur.
20. FIR No.69, dated 16.06.2021, U/s 61 of Excise Trial is pending Act, Police Station Sadar Barnala.
21. FIR No.4, dated 16.01.2023, U/s 61 of Excise Trial is pending Act, Police Station Sherpur, District Sangrur.

5. While referring to the antecedents of the petitioner, the learned State counsel contends that the petitioner was a habitual offender and there was sufficient corroborative evidence by way of banking transactions showing that a sum of Rs.1,32,000/- had been paid by the petitioner into the account of Harwinder Singh @ Mintu, the arrested accused. Therefore, he was not entitled to the concession of anticipatory bail moreso when this was the second bail petition, the first one having been withdrawn after lengthy arguments as recently as on 29.09.2023.

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 4 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 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 5 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 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 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 6 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 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:-

7 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 "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)

10. This Court in the case of Ranjit Singh Versus State of Punjab, CRM-M-25526-2023, decided on 17.07.2023, held as under:-

"8. Coming back to the facts of the present case, it is pertinent to note here that other than the instant FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of the arrested accused, the petitioner 8 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 is also an accused in two other cases under the NDPS Act. In addition, he had been an accused in three other cases, though he has been acquitted in the said cases. It is highly unlikely that

the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency.

9. When there are multiple FIRs against a person over a significant period of time (in this case 18 years), then even though he may have been acquitted in some of those cases, the twin conditions as envisaged under Section 37 of the NDPS Act that he has not committed an offence and was not likely to commit an offence cannot be satisfied.

10. Keeping in view the conduct of the petitioner and his criminal antecedents, his custodial interrogation would certainly be necessary to effect necessary recoveries and to take the investigation to its logical conclusion.

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

(emphasized supplied)

11. This Court in Soni Singh @ Chamkaur Sahib, CRM-M-31645- 2022, decided on 20.10.2022, held as under:-

"The Counsel for the petitioner contends that the petitioner is not named in the FIR nor in the secret information. He has been named only in the disclosure statement of his co-accused which is inadmissible in evidence and even otherwise since the recovery effected from him of 3 Kgs of Poppy Husk is of non commercial quantity, therefore the rigors of Section 37 of NDPS Act did not apply to the petitioner. Since the petitioner was in custody since 26.05.2022 and the trial was not likely to be concluded in the near future, he deserved the concession of bail.

The Counsel for the State on the other hand contends that the petitioner is a trafficker along with his co-accused.

9 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 As per the disclosure statement 200 Kgs of Poppy Husk was to be supplied to the petitioner. Further he is involved in two other cases under the NDPS Act as also one case under the Excise Act and, therefore, did not deserve the concession of bail in view of his antecedents.

I have heard counsel for both the sides at length. Admittedly, the petitioner in the present case is named in the disclosure statement of the arrested accused. Subsequently thereto 3Kgs of Poppy Husk was recovered at his instance which is a non commercial quantity. It may be relevant to mention here that limitations to the grant of bail under Section 37 of the NDPS Act are in addition to those prescribed under Cr.PC or any other law in force on the grant of bail as has been set out by the Hon'ble Supreme Court in Satpal Singh Vs. State of Punjab 2018(5) RCR (Criminal)

152. In the present case, the petitioner is involved in two other cases under the NDPS Act. Thus, as he is a habitual offender, he is not entitled to the grant of bail even under Section 439 Cr.PC keeping in view his antecedents. Even otherwise, assuming that the rigors of Section 37 of the NDPS Act did not apply to the petitioner, that by itself would not ipso facto lead to the grant of bail to the petitioner.

In view of the above discussion, I find no merit in the present petition and the same is therefore dismissed.

(emphasis supplied)

12. 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 the NDPS Act in 10 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 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. In Ranjit Singh (supra) and Soni Singh @ Chamkaur Sahib (supra) it has been held by this Court that where there were multiple FIRs against an accused over a period of time then, even though he had been named in a disclosure statement, he was not entitled to the concession of bail.

13. Coming back to the facts of the present case, other than the present FIR in which the petitioner has been nominated as an accused on the basis of the disclosure statement of his co-accused, the petitioner is also involved in one other case under the NDPS Act bearing FIR No.186 dated 11.12.2019 under Section 15 of NDPS Act, P.S. Shepur, District Sangrur and 20 cases under the Excise Act. It is highly unlikely that the petitioner would have been implicated in multiple FIRs at the whims and fancies of the Investigating Agency.

14. In fact, when there are multiple FIRs against an accused over a significant period of time, then the twin conditions as envisaged under Section 37 of the NDPS Act that he had not committed an offence and was not likely to commit an offence cannot be satisfied. Further, the limitation to the grant of bail under Section 37 of the NDPS Act are in addition to those prescribed under the Cr.P.C. or any other law in force on the grant of bail. Thus, a habitual offender is not entitled to the grant of bail even under the provisions of the Cr.P.C. keeping in view his criminal antecedents. On the contrary, in such cases, where anticipatory bail is sought the custodial 11 of 12 Neutral Citation No:=2024:PHHC:002286 2024:PHHC:002286 interrogation is certainly necessary even though the accused may have joined investigation at an earlier stage.

15. Keeping in view the evidence against the petitioner in the form of banking transactions and his criminal antecedents, his custodial interrogation would certainly be necessary not only as the

offence stands prima facie established but also to effect recoveries and to take the investigation to its logical conclusion.

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

(JASJIT SINGH BEDI)
JUDGE

09.01.2024

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No

Neutral Citation No:=2024:PHHC:00228

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