

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.23220 of 2020 (O&M)

Date of Decision.14.01.2021

Reserved on 06.01.2021

(Heard through VC)

Rakesh Kumar Singla

...Petitioner

Vs

Union of India

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.S. Rai, Senior Advocate with
Ms. Rubina Vermani, Advocate
for the petitioner.

Mr. Sanjay Vashisth, Advocate
Senior Panel Counsel for NCB.

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JAISHREE THAKUR J.

1. The instant petition has been filed for grant of regular bail to the petitioner in case bearing Crime No.33/2020 dated 12.06.2020 under Sections 8, 21, 22, 29 of NDPS Act at Police Station NCB, Zonal Unit, Sector 25(W), Chandigarh.

2. The facts in brief as alleged are that two consignments were booked by one Paramjit Kaur, proprietor of Brioshine Pharma, a licensed chemist at SCO No.38, Cabin-2, 1st Floor, Sector 11, Panchkula in the name of Balaji Traders, Shop No.158-A, Near DAV Girls School, Bazar No.1, Ferozepur Cantt-152001 through DTDC Courier Agency. The first consignment was booked on 10.06.2020 and the second consignment was booked on 12.06.2020.

3. On receipt of secret information that two consignments contained contraband, the Narcotics Bureau, Headquarters, Chandigarh

arrived at the Regional Office of DTDC Courier Agency at Panchkula and called Paramjit Kaur on 12.6.2020 (consignor of the parcels), who confirmed that she had booked the parcels herself. One parcel was opened at Panchkula and 20,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR) were recovered. Simultaneously on 12.06.2020, the Narcotics Bureau Amritsar arrived at DTDC Office at Court Road, Ferozepur and arrested one Bhavnish s/o Prem Kumar Dutta, the person to whom the consignment had been sent on 10.06.2020 and recovered 37,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR). Paramjit Kaur made a disclosure statement on 12.06.2020 that Rakesh Kumar Singla was the person, who had sent the contraband to her for its onwards dispatch to Bhavnish Kumar at Ferozepur. Based on the said disclosure statement made, a notice under Section 67 of the NDPS Act was issued to the petitioner on 13.06.2020 for putting in an appearance. He was arrested on 14.06.2020 and subsequently produced before the Special Court on 14.06.2020. Two days remand of the petitioner was taken and since then, he is in judicial custody. Thereafter, the petitioner applied for grant of regular bail, which was rejected and the matter has come up before this Court by way of instant Crl. Misc. Petition. Similarly the co-accused Paramjit Kaur and Bhavnish Kumar were also remanded to judicial custody after they were produced on 14.6.2020 before the Special Court at Panchkula.

4. Mr. R.S. Rai, learned Senior Advocate assisted by Ms. Rubina Vermani, Advocate appearing for the petitioner herein would contend that the petitioner was neither arrested on the spot nor any recovery of contraband was effected from him and thus, he has been illegally detained.

It is submitted that, he has been implicated only on the basis of a disclosure statement made by a co-accused Paramjit Kaur under Section 67 of the NDPS Act and also on the basis of his own self-inculpatory statement recorded under Section 67 of the NDPS Act, while he was in custody. It is submitted that such a statement can not be relied upon. In order to buttress his arguments, learned Senior Advocate relies upon the judgment passed by the **Hon'ble Supreme Court in Tofan Singh Vs. State of Tamil Nadu passed in Criminal Appeal No.152 of 2013 decided on 29.10.2020.**

5. Per contra, Mr. Sanjay Vashisth, learned Advocate appearing on behalf of the Narcotics Bureau submitted that there has been a recovery of almost 57,000 tablets of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR), which is of commercial quantity. Paramjit Kaur has admitted to sending the consignment to Bhavnish Kumar under her own signatures at the behest of the petitioner. She stated that she was totally unaware of the contents of the parcel sent to Balaji Traders at Ferozepur. It is also argued that there are screen shots of *Whatsapp* messages available with the NCB, which would connect the petitioner with the said contraband, as there is a message available showing transfer of an amount by the petitioner into the account of Harjinder Singh, husband of Paramjit Kaur. It is also argued that there are other persons involved in the sale and purchase of contraband as would be evident from the *Whatsapp* messages.

6. Mr. Sanjay Vashisth also submitted that the petitioner has admitted before the Investigating Officer that he knew Paramjit Kaur, who ran Brioshine Pharma at Panchkula, and she booked the said consignments on his asking and therefore, once having recorded his involvement in his own handwriting, he would not be entitled to the concession of regular bail.

7. I have heard learned Advocate for the parties and with their assistance have gone through the paper book as well as the case laws cited.

8. The facts are not in dispute regarding seizure of two consignments sent by Paramjit Kaur to Bhavnish Kumar at Ferozpuer. Admittedly, both the consignments contained contraband of Tramadol Hydrochloride 100 mg (Trade Name Clovidol-100 SR), which is of commercial quantity. The parcel that was sent on 10.06.2020 contained 37,000 tablets whereas the parcel that was seized on 12.06.2020 at Panchkula contained 20,000 tablets of aforesaid contraband. It is also admitted fact that Paramjit Kaur in her disclosure statement named Rakesh Kumar Singla, petitioner herein, as the person, who asked her to forward both the consignments to Bhavnish Kumar at Ferozepur, however, the learned Senior Advocate for the petitioner has urged that the said disclosure statement cannot be relied upon nor can any statement made by him in the judicial custody be relied upon as incriminating evidence against him.

9. A Division Bench of Hon'ble Supreme Court in **Tofan Singh Vs. State of Tamil Nadu (2013) 16 SCC 31** while discussing the ratio laid down in decisions of **Raj Kumar Karwal Vs. Union of India (1990) 2 SCC 409** and **Kanhiyalal Vs. Union of India (2008) 4 SCC** and certain other judgments observed that the ratio laid down in the case of Kanhiyalal Vs. Union of India (supra) is required to be re-looked and thus, referred the matter to a Larger Bench. The matter was referred to a Larger Bench of three judges, who culled out following two issues for determination:-

“1. Whether an officer “empowered under Section 42 of the NDPS Act” and/or “the officer empowered under Section 53 of the NDPS Act” are “Police Officers” and therefore, statements

recorded by such officers would be hit by Section 25 of the Evidence Act; and

2. What is the extent, nature, purpose and scope of the power conferred under Section 67 of the NDPS Act available to and exercisable by an officer under Section 42 thereof, and whether power under Section 67 is a power to record confession capable of being used as substantive evidence to convict an accused.”

The Larger Bench in its judgment has concluded in para 152 that *“a confessional statement made before an officer designated under Section 42 or Section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with Section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20 (3) and 21 of the Constitution of India.”* It was further held that the judgments rendered in **Kanhiyalal (supra)** and **Raj Kumar Karwal (supra)** do not state the correct law and are thus overruled. The reference was therefore answered 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 Act.”

10. In the instant case, the Narcotics Bureau is relying not only upon the statement given by a co-accused implicating the petitioner herein but also upon a statement given under Section 67 of the NDPS Act by the petitioner. The petitioner has been nominated as an accused on the disclosure statement of co-accused Paramjit Kaur who had sent the consignment to Ferozepur. The complicity of the petitioner will have to be determined by the quality of evidence led during trial. As far as the self inculpatory statement relied upon, this Court is *prima facie* of the opinion that the ratio as laid down in the reference order in **Tofan Singh's case** would come to the aid of the petitioner to allow him the benefit of regular bail.

11. Learned counsel for the NCB has also placed reliance on *Whatsapp* messages by which the petitioner could be implicated. However, on the asking of this Court, whether a certificate under Section 65B of the Indian Evidence Act is available at the present moment to authenticate the said messages, the answer is in negative. The recent judgment rendered by the Supreme Court in the matter of **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others (2020) 7 SCC 1** has held that a certificate Section 65B of the Indian Evidence Act is required when reliance is being placed upon electronic record. Therefore, the said message would be of no evidentiary value **as on date**.

12. The investigation in the matter is complete and the challan stands presented and therefore, this Court is of the opinion that no useful purpose would be served in keeping the petitioner behind bars. The instant

petition is allowed and the petitioner is directed to be released on regular bail on execution of adequate personal/ surety bond of an amount of Rs.10 Lakhs to the satisfaction of concerned trial Court/Duty Magistrate. However, any observation made herein shall not be construed to be an expression on merits of the case.

13. Needless to say that the Narcotics Bureau would always be at liberty to rely upon the Whatsapp messages after due compliance of provisions of Section 65-B of the Indian Evidence.

(JAISHREE THAKUR)
JUDGE

January 14, 2021
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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