(2015) 08 P&H CK 0248

In the Punjab And Haryana At Chandigarh

Case No : CRM No. M-20171 of 2015

Varinder Singh — APPELLANT

Vs

State of Punjab and Others — RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 29
Prevention of Money-Laundering Act, 2002 — Section 3, 4

Citation : (2016) 1 CCR 75 : (2015) 4 RCR(Criminal) 181

Hon'ble Judges : Surya Kant and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : R.K. Thakur and Kanwal S. Walia, Advocates, for the Appellant; Reeta Kohli, Additional A.G., for the Respondent

Judgement

Surya Kant, J.—The petitioner through this application under Section 439 of Code of Criminal Procedure seeks his release on bail in case ECIR No. 02/JLZO/2013 registered under Section 4 of the Prevention of Money Laundering Act, 2002 (for short ''the 2002 Act'') by the Directorate of Enforcement at Jalandhar, pursuant to the information received from Senior Superintendent of Police, Fatehgarh Sahib in furtherance of investigation of FIR No. 45 registered under the NDPS Act, 1985 at Police Station, Fatehgarh Sahib. The facts may be noticed briefly. The Punjab Police registered FIR No. 45 on 03.03.2013 at Police Station, Fatehgarh Sahib under the NDPS Act read with several provisions of IPC and Arms Act. As per the allegations contained in that FIR, huge amount of contraband, Indian and foreign currency were recovered from the accused persons found involved in a chain of offences.

2. Another FIR No. 241 was registered at Police Station Sadar, Patiala under the NDPS Act on 08.12.2013. The petitioner was arrested in this case on the very day. He is alleged to have made a confessional statement on 14.12.2013 regarding recovery of some contraband from his possession.

3. While he was in police custody in the above mentioned FIR, another FIR No. 50 was registered in 03.04.2013 at Police Station Urban Estate, Patiala in which also the petitioner was arrayed as co-accused under Section 29 of the NDPS Act on 16.12.2013. No recovery whatsoever is shown to have been effected from him in this second case.

4. During the petitioner''s detention in the above-stated two NDPS cases, the Directorate of Enforcement received information from the Office of Senior Superintendent of Police, Fatehgarh Sahib regarding recovery of drugs worth Rs. 1.30 crore along with Indian currency amounting to more than Rs. 1 crore during the course of investigation of case FIR No. 45 dated 03.03.2013. Consequently, the Enforcement Directorate registered the case ECIR No. 02/JLZO/2013 under Section 4 of 2002 Act.

5. The petitioner meanwhile approached this Court for his release on bail in FIR No. 241 dated 08.12.2013 and his application CRM No. M-28274 of 2014 was accepted vide order dated 06.10.2014, directing to enlarge him on bail.

6. Similarly, he applied for bail in FIR No. 50 of 2013 registered at Police Station Urban Estate, Patiala and in that case also this Court vide order dated 08.01.2015 passed in CRM No. M-38450 of 2014 released him on bail.

7. No sooner the petitioner was ordered to be released on bail in both the cases, the Directorate of Enforcement sought his production warrant on 08.01.2015 and took the petitioner on remand for four days.

8. During his interrogation while on remand or even prior thereto when he was allegedly interrogated by the Enforcement Agency while in jail, the petitioner is said to have confessed the receipt of Rs. 30,00,000/- as commission for supply of contraband/drugs by one Gurjeet Gaba to Richard and Robert of Manipur State. The amount of Rs. 30,00,000/- was statedly received by the petitioner during a span of eight years.

9. The star transaction on the basis of which the petitioner appears to have been nailed is of cash amount of Rs. 5,00,000/- deposited in his account on 29.06.2011.

10. There is one more transaction of cash deposit of Rs. 2,50,000/- on 19.03.2012, followed by transaction dated 21.08.2013 for a sum of Rs. 1,00,000/-. The other transactions on different dates are of less than Rs. 1,00,000/-.

11. The petitioner has his own version. As regard to the transaction of Rs. 5,00,000/- dated 29.06.2011, he claims to have borrowed that money from his father and elder brother as he was to pay Rs. 5,00,000/- for a business transaction for which he actually issued a cheque of Rs. 5,00,000/- on 01.07.2011.

12. Be that as it may, for an offence under the 2002 Act, onus would be on the

petitioner to explain each and every cash transaction before the Special Court in accordance with law.

13. The solitary question that arises for consideration is whether in the facts and circumstances of this case when the petitioner has already been enlarged on bail by this Court in the two NDPS cases, should he continue incarceration for the offence under Section 3 read with Section 4 of the 2002 Act?

14. We have heard learned counsel for the parties'' and gone through the material on record as well as the reply/affidavit filed by the Enforcement Directorate. The primary contentions of Sh. Sharma, learned counsel for the Enforcement Directorate is that in the event of petitioner''s release on bail:- (i) there is every likelihood of his absconding abroad; (ii) tampering with the evidence and that (iii) investigation against the petitioner''s wife who is statedly living in United States is still going on. Mr. Sharma has pointed out that the petitioner''s two co-accused in one of the NDPS case have since misused the concession of bail as they are absconding.

15. On the other hand, learned counsel for the petitioner submits that passport of the petitioner is with the investigating agency without which he cannot leave the country. He further submits that since the investigation is still going on, trial is not likely to be concluded in near future. The petitioner is languishing in jail from the last twenty months. He refers to Section 4 of the 2002 Act which prescribes the minimum sentence of three years which may extend, in a given case, upto ten years. On consideration of the respective submissions but without expressing any views on the merits of allegations, we find it a fit case to release the petitioner on bail. He has already spent almost twenty months in custody. The investigation is yet to be concluded. Though the complaint has since been filed against the petitioner but there is no likelihood of its adjudication within a short span. The accusation against the petitioner is of receiving Rs. 30,00,000/- during a span of eight years out of which the biggest transaction pertains to a sum of Rs. 5,00,000/-. Taking into consideration the totality of circumstances, we are satisfied that no useful purposes shall be served by detaining the petitioner. He is, thus, ordered to be released on bail on his furnishing adequate bail/surety bonds to the satisfaction of Special Judge, Fatehgarh Sahib and if so required, petitioner shall furnish heavy surety. The passport of the petitioner shall remain in the custody of the Special Court and he shall not leave the country without prior permission of that Court.

