

CRM-M-519-2023 (O&M)

219

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-519-2023 (O&M)
Date of decision: July 19, 2023

Sandhura Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jashandeep Singh Sandhu, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.68 dated 06.08.2022, registered under Sections 15(C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Phul, District Bathinda.

2. Per prosecution version, FIR was registered on the basis of chance recovery of 10 bags of poppy husk during routine petrol, from the house of co-accused Mithu Singh. During investigation, it transpired that petitioner and Gurdial Singh brought the contraband in truck from Madhya Pradesh. 10 bags were supplied to Mithu Singh and 5 bags were supplied to Sony Singh. Petitioner was later on arrested as a suspect on 07.08.2022.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that petitioner was not named in the FIR and no recovery was effected from him. Disclosure statement of co-accused is not admissible evidence. Petitioner was not present at the spot. He also submits that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

4. On the other hand, learned State counsel, on instructions from HC Jagdev

Singh opposes the bail petition. He submits that petitioner has committed a serious

CRM-M-519-2023 (O&M)

offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. Petitioner confessed before the police that he brought 15 bags of poppy husk in truck No. PB-03H-7937 from Khalsa Dhaba Neemach (Madhya Pradesh). Co-accused, Mithu had disclosed that he had deposited Rs. 1,00,000/- in the account of petitioner. There is one more case registered against the petitioner.

4.1. Learned State counsel further contends that petitioner and his co-accused are running a racket of smuggling of poppy husk from Madhya Pradesh and supplying it in the State of Punjab. Recovery of contraband falls under commercial quantity and petitioner does not deserve the concession of bail.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. Petitioner was not named in the FIR and has been implicated on the basis of disclosure statement of co-accused. Be that as it may, same shall be adjudicated by the Court below after conclusion of trial. On a Court query, learned state counsel submits that challan has already been filed and charges were framed on 01.02.2023. Out of total 18 witnesses, 2 have been examined. Trial has since commenced, petitioner is not required for custodial interrogation.

6.1. Trial is likely to take long time as it is proceeding at a snail pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 11 months in preventive custody. He is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the trial Court to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

CRM-M-519-2023 (O&M)

7. Petitioner is stated to be 40-year old married personand has wife and two children, who are totally dependent on him and in his absence, they are living in sheer penury.
8. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.
9. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.
10. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.
11. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 19, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No