

CRM-M-740-2023 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-740-2023 (O&M)

Date of decision: 21.07.2023

Dinesh Kumar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sandeep Verma, Advocate for the petitioner.

Mr. Virat Rana, AAG Punjab.

ARUN MONGA, J. (Oral)

Petitioner, 30-year old, suffering from 70 percent physical disability, seeks bail in criminal case bearing FIR No.163 dated 24.12.2021 (Annexure P-1), registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Shambu, District Patiala.

2. Per FIR, on 24.12.2021, police party headed by ASI Darshan Singh were carrying out routine checking of the vehicles coming from Ambala side. On the basis of suspicion, petitioner was apprehended, who was carrying a bag then. On checking, 2 kilograms of heroin was recovered, which was taken into police possession after adopting due procedure. Petitioner was arrested and is in custody since then.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He submits that the alleged recovery effected from the plastic bag has wrongly been planted on the petitioner. Referring to disability certificate, Annexure P-5, learned counsel submits that petitioner is 70 per cent permanently disabled from left lower limbs and can not even walk. He further submits that petitioner is in custody since 24.12.2021 and challan has already been presented before the competent Court but none of the witnesses has been examined till date. He further argues that there is no compliance of Sections 50, 52 and 52-A and 57 of the NDPS Act in the present case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. The quantity of contraband recovered falls under the commercial quantity and as per provision of Section 37 of NDPS

Act, he is not entitled to concession of bail. He further submits that in case petitioner is granted concession of bail, there are chances of his fleeing from justice.

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

6. Apprehension of the prosecution is that in case petitioner is granted the benefit of bail, he will not join the trial proceedings and there is likelihood of his fleeing. However, the same flies in the face of physical condition of the petitioner, who as per the narrative in FIR, is stated to be a crippled person. There is no likelihood of his running away. Learned counsel for the petitioner points out that disability certificate issued by competent Officer contained at Annexure P-5, reflects that petitioner is 70 per cent disabled, having been inflicted with polio in past.

7. Challan was presented and the case is fixed for prosecution evidence but none of the prosecution witnesses has been examined so far. Investigation is thus complete *qua* petitioner. He is thus not required for custodial interrogation. Commencement/conclusion of the trial is likely to take quite sometime. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for almost 01 years and 7 months in preventive custody, he being behind bars since 24.12.2021. 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 Court below 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.

8. Petitioner is stated to have fixed abode, has clean antecedents and is unlikely to be a flight risk. Offence allegedly committed by petitioner is of non-violent

nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime.

9. 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.

10. Accordingly, petitioner is ordered to be released on bail 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 Magistrate, as the case may be.

11. 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.

12. It is made clear that any observations and/or submissions noted herein above 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.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 21, 2023
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No