

CRM-M-9982-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

211

CRM-M-9982-2022

Date of decision: 16.08.2023

Mathew

....Petitioner

V/s

State of Punjab

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Harjinder Singh, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (Oral)

Custody certificate of the petitioner has been tendered in Court by learned State counsel, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.160 dated 21.09.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Doraha, District Khanna.

3. Per FIR, petitioner was apprehended on 21.09.2021 by a police party on a suspicion. At the time, co-accused Ram Chand was on driver seat of an Innova vehicle and petitioner was a co-passenger sitting on the front seat. On search, one bag lying in his feet was recovered. Bag contained 450 Ampules of Rexogestic 2 mls each and 480 vials of Avil 10 mls each. Petitioner was taken into custody. FIR was registered and investigation was carried out. Per FSL report received later on, the Rexogesic injections contained the contraband salt-Buprenorphine Hydrochloride. Recovered quantity, i.e. 450 injections ampules of

CRM-M-9982-2022

2 ml each being 900 ml equivalent to 900 grams, falls in the category of 'commercial quantity'.

4. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He further submits that the alleged recovery was not made from the conscious possession of the petitioner but has been planted on him. Learned counsel further points out that the other co-accused has been accorded the concession of regular bail by this Court vide CRM-M-51552-2021. He further submits that petitioner is in custody since 21.09.2021, challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars. No other case is pending against him. Learned counsel further urges that petitioner is HIV positive patient and infected with Hepatitis-C and his health condition is very critical and he may die any day for lack of proper medical care in the jail.

5. On the other hand, learned State counsel, on instructions from ASI Sikander Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. She submits that per FSL Report, alleged recovered quantity falls within the category of commercial quantity and rigors of Section 37 of the NDPS Act would be attracted in this case. Challan has been presented and charges have been framed on 08.03.2022. There are 12 prosecution witnesses. Six prosecution witnesses have already been examined and two witnesses have given up and only four witnesses are yet to be examined. She, however, admits that no other case is pending against him, but for a case under Sections 110/151 Cr.P.C. in which he is on bail.

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

CRM-M-9982-2022

7. Vide previous court order dated 07.08.2023, learned State counsel was requested to get the petitioner medically examined and inform this Court with regard to his medical condition. Pursuant thereto, Senior Medical Officer, Central Jail, Ludhiana has given medical report dated 11.08.2023 handed-over during the course of hearing and is taken on record as Annexure 'A'. Same reveals that petitioner is indeed HIV positive and is suffering from Acquired Immune Deficiency Syndrome (AIDS).

8. Challan is stated to have been presented on 07.01.2022 and charges have also been framed. Since the investigation is complete *qua* petitioner, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. There are total 12 witnesses cited by the prosecution and four witnesses are yet to be examined. Conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas petitioner has already been languishing in jail for more than 01 year and 10 months in preventive custody, being behind bars since 21.09.2021.

9. Petitioner 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.

10. Be that as it may, 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. In any case, allegations against petitioner

CRM-M-9982-2022

are matter of trial. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence and he is not likely to commit any offence while on bail.

11. Petitioner is stated to be a family person having fixed abode. It is unlikely that he poses any flight risk and/or will flee from trial proceedings.

12. Considering the overall scenario and fact that petitioner is a known case of HIV infection, could be a risk for other inmates as well, 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.

13. Accordingly, petitioner is ordered to be released on bail, in case 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.

14. 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.

15. 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.

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

(ARUN MONGA)
JUDGE

August 16, 2023
Ajay

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