

CRM-M-12801-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: August 17, 2023

Suresh Kumar

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Ms. Meghna Nehra, Advocate for
Mr. Sunil K. Nehra, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, it is petitioner's second foray before this Court seeking his release as undertrial in a case bearing FIR No.217 dated 13.06.2020, registered under Sections 21-C, 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Fatehabad, District Fatehabad. First petition bearing CRM-M-35331-2020 was dismissed vide order dated 09.05.2022 (Annexure P-2).

2. Per prosecution version, on 13.06.2020, petitioner was seen coming on motorcycle and was apprehended on suspicion by police party headed by ASI Surender Singh. 407 grams of Heroin was recovered from his possession. Petitioner was later released on interim bail on 09.11.2020 in the aforesaid first bail petition bearing No.CRM-M-35331-2020. However, the same was dismissed. After surrender, petitioner is in custody since 12.05.2022.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated. She submits that neither motorcycle in question is in the name of petitioner nor was he apprehended at the spot. She contends that Section 50 of the NDPS Act was not complied with as no independent witness was joined by the police at the time of affecting alleged recovery. Petitioner is not involved in any other case. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation.

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False implication of petitioner cannot be ruled out. 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 ASI Chiman Lal, opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that 407 grams of Heroin was recovered, which falls within commercial quantity and rigors of Section 37 of NDPS Act are applicable. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. Learned State counsel though admits that there is no other case against the petitioner.

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

6. On a Court query, learned State counsel informs that challan was filed, but charges are yet to be framed. Investigation is thus complete and he is not required for custodial interrogation. Out of total 18 witnesses, none has been examined so far since charges are not framed yet. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 1 year in preventive custody, being behind bars since 12.05.2022.

7. 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 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.

8. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioner are matter of trial. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence.

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9. Petitioner is stated to be a 30-year old family person having wife and minor children, who are totally dependent on him as he is the only bread-earner and they are living in sheer penury during his incarceration. Being a family man and having fixed abode with clean antecedents, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.
10. 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.
11. 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.
12. 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.
13. 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.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No