

CRM-M-15937-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-15937-2023

Date of decision: 12.10.2023

Partap Singh

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Joginder Pal Devgan, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

This is second foray of the petitioner seeking his release as an undertrial in a case with FIR No.146 dated 05.10.2019, registered under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the City Khuian Sarwar, in Fazilka.His earlier petition was dismissed as withdrawn vide order dated 28.02.2022,(Annexure P-9), passed in CRM-M-54379-2021.

2. According to the First Information Report (FIR), on 05.10.2019, a police party led by ASI Balbir Singh set up a barricade on Main Road Highway Abohar Sri Ganganagar, near Ganpati Waxing Plot. The petitioner was spotted riding a horse-drawn cart (Trolla) loaded with coal. He was signaled to stop and, upon inspection, 1050 intoxicating tablets containing Diphenoxylate Hydrochloride were found on the petitioner without any permit or license. Subsequently, the tablets were sealed and seized after following due procedure, and the petitioner was arrested on the spot.

3. The petitioner's counsel argues that the alleged recovery was not made from the petitioner's conscious possession but was planted on him. He contends that, based on the FIR's allegations, no substantial case is made against

the petitioner, and the prosecution's narrative appears to be an attempt to falsely implicate him. The counsel also points out that the entire prosecution case relies on the testimony of official witnesses, raising doubts about its credibility.

3.1 Additionally, the petitioner's counsel asserts that there is insufficient evidence against the petitioner. The petitioner is unrelated to the alleged offense, and the purported recovery of contraband is questionable. It is further argued that the provisions of Sections 41, 42, and 50 of the NDPS Act have not been followed.

3.2 Furthermore, it is argued that the petitioner was arrested on 05.10.2019 but was granted interim bail by the learned Special Court, Fazilka, as per an order dated 01.04.2020, until the receipt of the FSL (Forensic Science Laboratory) report, and the petitioner never misused this bail privilege. Subsequently, the petitioner voluntarily surrendered before the trial court on 01.06.2020 and has been in custody since then. Considering the lengthy duration of the trial, it is argued that no useful purpose would be served by keeping the petitioner behind bars.

3.3 The petitioner's counsel also maintains that further custodial interrogation is not required. There is no apprehension that the petitioner would tamper with evidence or influence prosecution witnesses. The petitioner maintains their innocence and claims to have been falsely implicated in the case.

4. On the other hand, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that according to the FSL Report, the alleged recovered quantity would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, on instructions from ASI Desh Raj, learned State counsel informs that the challan was filed and charges were framed on August 16, 2021. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the eight prosecution witnesses, none has been examined so far. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since October 05, 2019 till April 1, 2020 (05 months and 27 days) and June 01, 2020 till now, i.e. for more than 03 years and 02 months

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. The documentary evidence is more in the nature of an FSL report regarding the contraband, has already been filed in the Court below and is not accessible to the accused. There is no probability of tampering with evidence as it has already been seized by the investigating agency. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

8. The offence allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. At this stage, the allegations against the petitioner are subject to trial. In any case, there appears to be a reasonable ground to believe that the petitioner may not be guilty of the alleged offense, and he is not likely to commit any offense while on bail.

9. The petitioner is stated to be aged 35 years old man and his continued incarceration may rendered him jobless forever.As a responsible family

man with fixed abode, the petitioner is unlikely to pose a flight risk or evade 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 by keeping the petitioner in further preventive custody.

11. Accordingly, the 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 the learned trial Court where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

12. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the 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 the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

14. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 12, 2023
Ajay

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