

CRM-M-16006-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-16006-2023

Date of decision: October 16, 2023

Satish @ Ganja

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Sunita Devi, Advocate for
Ms. Manpreet Ghuman, Advocate for the petitioner.
Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (Oral)

Following the denial of bail by the learned trial court, the petitioner is now before this Court seeking his release as an undertrial in a case with FIR No.486 dated December 31, 2020, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the Sadar Police Station in Jind.

2. According to the First Information Report (FIR), ASI Rajbir Singh, along with other police officials, was on routine patrolling duty. They received secret information that the petitioner was involved in the sale of contraband. Consequently, on the day of the incident, i.e., December 31, 2020, a barricade was set up at Siwaha T-Point Pillukhera village. After some time, the petitioner, along with co-accused Pardeep, arrived on a motorcycle, with Pardeep driving and the petitioner as the pillion rider. They were signaled to stop and were apprehended by the police. Upon inspection, 202 grams of smack were found in a polythene bag carried by the petitioner, and an additional 188 grams of smack were discovered in the toolbox of the motorcycle. A total of 390 grams of smack was recovered from the conscious possession of the petitioner and the co-accused. An FIR was registered, and the petitioner was arrested on the spot.

3. The learned counsel representing the petitioner argues that the alleged recovery was not made from the petitioner's conscious possession but was planted on them. Based on the allegations outlined in the FIR, it is contended that no case is made against the petitioner, and the prosecution's narrative appears to be an attempt to falsely implicate the petitioner and his co-accused. The learned counsel further maintains that the entire prosecution case relies on the testimony of official witnesses, raising doubts about the credibility of the prosecution's account.

3.1. Furthermore, the petitioner's counsel asserts that there is no substantial evidence against the petitioner. The petitioner is not connected to the alleged offense, and the reported recovery of contraband is questionable.

3.2. She further submits that the petitioner has been in custody since December 31, 2020, and the charge sheet has already been presented. The petitioner is not required for further custodial interrogation, and the trial is expected to be a lengthy process. Therefore, keeping the petitioner behind bars serves no useful purpose.

3.3 Learned counsel appearing for the petitioner relies on Apex Court's judgment in case titled '*Hasanujjaman and others Vs. The State of West Bengal*'¹ to contend that *de hors* the merit merely on the ground of duration of custody, petitioner is entitled to bail. She further relies on Apex Court's judgment in case titled '*Sanjay Chandra versus CBI*'² to contend that imprisonment before conviction has a substantial punitive content.

3.4. The petitioner's counsel further contends that the petitioner is not required for additional custodial interrogation. There is no indication that the petitioner would tamper with evidence or influence prosecution witnesses. The petitioner maintains his innocence and claims to have been falsely implicated in the case.

¹ SLP (Crl.) No.3221-2023 decided on 04.05.2023

² AIR 2012 SC 830

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. He further submits that petitioner is involved in three other cases, though he is on bail in those cases.

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

6. In response to a query from the Court, on instructions from SI Rajender Kumar, learned State counsel informs that the challan was filed on October 28, 2022, but charges have not been framed yet. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the twenty-one 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 December 31, 2020, for more than two years and nine 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 the sole provider for his family. 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 16, 2023
Ajay

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