

CRM-M-16996-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-16996-2022 (O&M)

Date of decision: August 08, 2023

Kulwinder Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Manjinder Singh Saini, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)**CRM-32933-2023**

For the reasons stated in application, same is allowed. Copy of FIR No.253 dated 29.11.2019 of Police Station, Tanda, District Hoshiarpur, as Annexure P-3 is taken on record subject to all just exceptions.

Main case (O&M)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.0046 dated 15.03.2019, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Tanda, District Hoshiarpur, Punjab.

2. Per prosecution version, on 15.3.2019, ASI Mahesh Kumar along with HC Balwinder Singh No.391, Constable Parsann Singh No.697 and Constable Harjit Singh No. 1075 were on patrolling duty on their private vehicles in connection with Lok Sabha Elections and were going from Police Station, Tanda towards Adda Cholang and had erected *nakabandi* (barricading) near Village Kharal Khurd, Gurudwara Sahib. Meanwhile, from Village Jaura, one Car bearing No.PB-03Z-4185 came which was signalled to stop by the ASI, but the driver of the car tried to retreat. On the basis of suspicion, he was

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apprehended by the ASI with the help of police officials. Said person took out one envelope from his pocket and tried to slip away after throwing it on the foot, and second person after opening the front door of Car also threw one envelope and tried to run away. Upon asking, accused disclosed their names and parentage as Vijay and Kulwinder Singh (petitioner) sons of Shingara Singh, residents of Village Baghiari. From co-accused Vijay, 110 grams intoxicated substance (Alprazolam) and from accused Kulwinder Singh (petitioner), 105 grams of intoxicated substance (Alprazolam) was recovered. An FIR was registered in this regard. Petitioner was earlier granted interim bail and upon receipt of FSL report, he surrendered on 12.01.2023 and is in custody since then.

3. Learned counsel appearing on behalf of petitioner submits that petitioner has been falsely implicated in this case. He further submits that no quantity of alleged contraband was mentioned in the FIR as it was stated therein that petitioner and co-accused had thrown the NDPS substance. Alleged contraband recovered is marginally higher than the commercial quantity which is 100 grams of Alprazolam. Petitioner did not have any knowledge of the alleged recovered substance and it cannot be said to be recovered from conscious possession of the petitioner.

3.1. Learned counsel further submits that there are two more cases against the petitioner, and in one case he is on bail and in second FIR, no alleged recovery was effected from him. Petitioner was granted concession of interim bail subject to his surrender on receipt of report of Chemical Examiner. Petitioner surrendered accordingly, and is in custody since 12.01.2023. Petitioner never misused the aforesaid concession of interim bail. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. 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 SI Daljit Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. Since recovery of contraband falls in the category of commercial quantity, rigors of Section 37 of NDPS Act shall be attracted. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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 and charges were framed on 10.07.2020. Investigation is thus complete *qua* the petitioner and he is not required for custodial interrogation. Out of total 14 witnesses, 02 have been examined so far.

7. 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 6 months in preventive custody, being behind bars since 12.01.2023.

8. 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.

9. 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

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petitioner may not be guilty of the alleged offence. He is not likely to commit any offence while on bail.

10. Petitioner is stated to be 33-year old and has to look after his family. Being a family man and having fixed above, it is unlikely that he poses any flight risk or will flee from trial proceedings.

11. 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.

12. 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.

13. 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.

14. 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.

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

(ARUN MONGA)
JUDGE

August 08, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No