

2141st case

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17222-2023 (O&M)

Date of decision: 25.09.2023

Yogesh Kumar @ Jogi

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Tanvir Singh Attariwala, Advocate,
For the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Custody certificate of the petitioner has been tendered in course of hearing, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.0092 dated 07.05.2019, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Phase-1, District SAS Nagar, Mohali.

3. Per prosecution version, on 07.05.2019 police party was on patrolling duty and checking suspected persons & vehicles, when they saw the car of the petitioner coming from police line side. On seeing the police, petitioner tried to turn around but was nabbed. From the car allegedly 100 injections of Leegestic containing Buprenorphine 2 ml each and 100 injections of Avil 10 ml each were recovered. FIR was registered on 07.05.2019 and petitioner was taken into custody.

4. Learned counsel for the petitioner submits that petitioner is suffering from dreadful HIV disease. He was granted interim bail vide order dated 25.07.2019 awaiting the FSL report. However, after receipt of FSL report, interim bail of the petitioner was cancelled and he was taken into custody 23.02.2023. Petitioner was also granted interim bail by this Court vide order dated 14.11.2022 being an HIV patient. Petitioner never misused the concession of interim bail granted to him and surrendered upon receipt of FSL report.

5. Learned counsel for the petitioner submits that there are serious violations of Sections 42 and 43 of NDPS Act. Such mandatory provisions of the Act were not followed during the alleged recovery. He argues that no independent /public witness or gazetted officer

intoxicants is from the carand not from the conscious possession of the petitioner. Petitioner has been falsely implicated in the case.

5.1 He further submits that the substance allegedly recovered from the petitioner is actually a prescription medicine, Burpenorphine, which is also used for treating and relieving pain in HIV patients. Avil injection, is not a psychotropic substance under the NDPS Act. Learned counsel for the petitioner submits that petitioner being HIV patient has to regularly take Buprenorphine as a palliative care. Medical record of the petitioner is annexed as Annexure P-5.

5.2 Learned counsel also submits that 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.

6. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. He further submits that another case under NDPS Act is pending against him.

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

8. Learned State counsel, on instructions from ASI Charanjit Singh, submits that challan was filed on 20.07.2020 and charges were framed on 05.02.2021. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial. Out of 13 prosecution witnesses, none has been examined. 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 in jail for 07 months and 10 days from 11.05.2019 to 29.07.2019 and from 23.02.2023 to 14.07.2023. Petitioner did not misuse the concession of interim bail.

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 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.

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 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 maynot be guilty of the alleged offence. He is unlikely to commit any offence while on bail.
11. Petitioner is stated to be a young boy, aged 23 years and due to prolonged incarceration his health is deteriorating very fast being an HIV patient. 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 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, if 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 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.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

25.09.2023
vandana

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