

CRM-M-21822-2021 (O&M)

214 (1st case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21822-2021 (O&M)

Date of decision: July 13, 2023

Parmod Jangshah

....Petitioner

versus

State of Punjab

....Respondent

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

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)**CRM-39242-2021**

For the reasons stated in application, same is allowed subject to all just exceptions. Copy of FSL report as Annexure P-3 is taken on record.

Main case (O&M)

Petitioner, seeks bail in case bearing FIR No.08 dated 08.01.2021, registered under Sections 18, 20, 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Lalru, District SAS Nagar (Mohali).

2. Per First Information Report (FIR), on 08.01.2021, in the area of Shiv Mandir, Jharmari, petitioner was found in possession of certain prescription medicines beyond permissible quantity viz 6,000 (100 pouches X 60) tablets of Lomotil, 900 (60 strips X 15) tablets of Nitravet-10 and 75 bottles of Biorex syrup of 100 ml. each, without any license or permit. Whereas, co-accused of the petitioner, namely Kamaldev Garti was found in possession of 9 Kg. 500 grams of Charas and 2 Kg. opium, without any permit or licence. Both were taken into custody on the spot on 08.01.2021 itself. Both have file separate bail petitions.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that there is no other criminal case against the petitioner. Provisions of NDPS Act have not been complied with during alleged search

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and raid as the search was not conducted in the presence of any gazetted officer. No independent witness was joined despite the fact that alleged recovery was made in broad day light where there was no dearth of independent witnesses. Alleged recovery from petitioner is non-commercial, he argues. He submits that petitioner is 39-year old married person having two school going children to look after. Her wife is working as Chowkidar in a private factory in District Solan.

4. On the other hand, learned State counsel, on instructions from SI Shalinder Kumar opposes the bail petition. She submits that petitioner has committed a serious offence. Challan was filed and finding *prima facie* case against petitioner, charges have also been framed. Recovery was effected in the presence of a gazetted officer after complying with mandatory provisions of NDPS Act, and the same was commercial quantity.

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

6. In the present case, no independent witness is stated to have joined the investigation. As per custody certificate, there is no other case against the petitioner.

6.1. Petitioner cannot be kept in preventive custody merely on suspicion and 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 alleged contraband 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.

7. Challan has been filed and trial has commenced. Petitioner is not required for custodial interrogation. Out of total 14 witnesses, none has been examined so far. Trial is likely to take long time. Whereas, petitioner has already been languishing in jail for the past more than two and a half years in preventive custody, he being behind bars since 08.01.2021. Petitioner is 39-year old married person having two school going children to look after.

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8. 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.

9. Accordingly, petitioner is ordered to be released on bail 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.

9.1. Since petitioner is stated to be resident of Nepal and his wife is working as a chowkidar in a private factory in District Solan and he has two school going children, likelihood of his running and/or absconding is though remote, but while granting bail, Court below shall ensure that in case, petitioner has a passport, the same shall be kept in custody of the Court below till the trial is over along with taking an undertaking that petitioner shall not leave the country without prior permission of the Court.

10. 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.

11. 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.

12. Pending application(s), if any, shall also stand disposed of. Bail petition of the co-accused filed separately is being dismissed vide independent order of even date for the reasons stated therein.

(ARUN MONGA)
JUDGE

July 13, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No