

CRM-M-18497-2023 (O&M)

222

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18497-2023 (O&M)

Date of decision: July 19, 2023

Sonu @ Loli

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.122 dated 18.09.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Sections 25, 29 of NDPS Act added later on), at Police Station Kulgari, District Ferozepur.

2. Per prosecution version, on 18.09.2022, co-accused Gurpreet Singh alias Gora was apprehended by a policy party on suspicion, while he was travelling in a car and upon search, 260 grams of heroin was recovered. Upon disclosure statement of aforesaid co-accused, petitioner was nominated in this case, who is registered owner of car from which contraband was recovered. Petitioner was arrested on 04.02.2023.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that petitioner was not named in the FIR and no recovery was effected from him. Disclosure statement of co-accused is not admissible evidence. Petitioner was not present at the spot. Petitioner is not involved in any other NDPS case. He also submits that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. 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

CRM-M-18497-2023 (O&M)

4. On the other hand, learned State counsel, on instructions from ASI Swarn Singh 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. Car which was used in the offence belongs to the petitioner. There is one more case against the petitioner under Excise Act, in which he is on bail. On a Court query, he submits that challan has already been filed and charges were framed on 03.04.2023.

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

6. Challan is stated to have been filed and even charges have already been framed and trial has commenced, petitioner is not required for custodial interrogation. Petitioner was not named in the FIR and has been implicated on the basis of disclosure statement of co-accused. Be that as it may, same shall be adjudicated by the Court below after conclusion of trial. As regards antecedents, learned State counsel admits that petitioner is not involved in any other NDPS case but for one case under Excise Act, wherein he is on bail.

6.1. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 5 months in preventive custody, being behind bars since 04.02.2023. He 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. Trial is likely to take long time as it is proceeding at a snail pace. Out of total 14 witnesses, none has been examined.

7. Petitioner is stated to be sole breadwinner of his family comprising of wife and four minor children, who are totally dependent on him and in his absence, they are living in sheer penury.

CRM-M-18497-2023 (O&M)

8. Further, 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 19, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No