

CRM-M-18575-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-18575-2023

Date of decision: 21.07.2023

Tanko Mohammed Ebube Nwankwo @ Advin

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Saurabh Sharma, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (Oral)

Petitioner seeks bail in criminal case bearing FIR No.288 dated 16.09.2022, registered under Sections 21 and 29 (added later on) of the NDPS Act, 1985 at Police Station, Barara, District Ambala.

2. Per FIR, on 16.09.2022, on secret information, a person was spotted walking near a barricade by police was intercepted but when he tried to retreat, was nabbed on suspicion. On enquiry, he disclosed his name as Sukhdev Singh @ Sukha. After completing all the legal formalities, when his search was conducted, Heroin weighing 263 grams contained a transparent polythene bag was recovered from him. FIR was registered. During the course of investigation, name of the petitioner surfaced in the disclosure statement suffered by aforesaid co-accused Sukhdev Singh @ Sukha. Finding sufficient evidence against the petitioner, he was given notice under Section 52 of NDPS Act and was arrested on 02.11.2022.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. According to him, there is violation of the mandatory provisions of NDPS Act. He submits that petitioner was nominated as an accused and taken in custody merely on the basis of custodial disclosure statement of co-accused Sukhdev Singh @ Sukha, which is not admissible in

court. He submits that petitioner is entitled to concession of bail per ratio of judgment rendered in *Tofan Singh vs. State of Tamil Naidu*¹.

3.1. Learned counsel for petitioner further submits that quantity of contraband alleged to be recovered from co-accused is marginally higher than the commercial quantity. He would further urge that per prosecution version, recovery effected in present case includes weight of polythene bag and if the same is excluded and error of weight is taken into account, the alleged contraband would not fall under the head of 'commercial quantity'.

3.2. Learned counsel for petitioner further contends that at the time of his arrest in the present FIR, petitioner was already lodged in Jail in another FIR No.327 dated 01.09.2022, registered under Sections 21 and 29 of the NDPS Act at Police Station Parao, District Ambala and as such his involvement in the instant case is itself under a cloud.

4. On the other hand, learned State counsel, on instructions from SI Amit Kumar, opposes the bail petition. He submits that petitioner is involved in three more cases under NDPS Act and is a habitual offender. The quantity of contraband recovered falls under commercial quantity as per provisions of the NDPS Act. Moreover, he submits that being a foreign national, petitioner may misuse the concession of bail.

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

6. Challan has been presented and the case is fixed for prosecution evidence but none of the prosecution witnesses has been examined so far. In any case, investigation is complete *qua* petitioner. He is thus not required for custodial interrogation in the present case. Allegations against petitioner are a matter of trial at this stage. Commencement/conclusion of the trial is likely to take quite some

¹2021(1) RCR (Criminal) 1

time. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for more than 8 months in preventive custody, he being behind bars since 02.11.2022. 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 Court below 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.

7. That apart, offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime.

8. Petitioner is stated to be 33-year old citizen of Nigeria, but currently residing in India, pursuing various avenues to make a successful living. Apprehension of the prosecution that petitioner, being a foreign national and flight risk, may misuse the concession and not join the proceedings in trial, can be plugged by making him surrender his passport during the trial. Learned counsel for the petitioner, however, submits that petitioner's passport has already been impounded by learned trial Court in the other trial proceedings, arising out of FIR No.327 dated 01.09.2022 *ibid*. Learned State counsel is unable to confirm the same due to lack of instructions.

9. Be that as it may, if the passport of the petitioner has not been impounded, as aforesaid, he is directed to furnish his passport to learned trial Court in the proceedings arising out of the present FIR and shall be kept in custody until the conclusion of the trial. State counsel has since submitted that

petitioner is involved in three more cases, it is made clear that bail is being granted only in the present case and State is at liberty to proceed against the petitioner in other cases in accordance with law.

10. Considering the overall scenario and without commenting on the merits of the instant case, petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody in the present case.

11. 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 Magistrate, as the case may be.

12. 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.

13. It is made clear that any observations and/or submissions noted herein above 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.

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

(ARUN MONGA)
JUDGE

July 21, 2023
Ajay

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