

CRM-M-18792-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-18792-2023

Date of decision: 20.09.2023

Nirbhai Singh @ Soni

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kunal Choksi, Advocate for the petitioner.

Mr. Madhur Sharma, AAG Punjab.

ARUN MONGA, J. (Oral)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.148 dated 21.12.2020, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Doraha, Police District Khanna, Punjab.

2. Per prosecution version, ASI Charanjit Singh along with other police officials was on patrolling duty and was present at service road in front of Punjab PUNSUP godown. They were checking suspicious persons and vehicles in the area. At about 04:05 p.m., petitioner, who was carrying a backpack on his shoulder, was seen coming from Kaddan Chowk towards Doraha side. On seeing the police party, he got perplexed and turned towards his left side. On the basis of suspicion, he was signaled to stop and apprehended by the police party. On checking, intoxicating tablets i.e., 58 strips of Lomotil tablets, each strip containing 60 tablets, totaling 3480 tablets were recovered from his possession. FIR was registered and petitioner was arrested on the spot.

3. Learned counsel for the petitioner contends that alleged recovery was not made from the conscious possession of petitioner but has been planted on him. Moreover, learned counsel further submits that these are prescription drugs which are used for stomach disorder.

3.1 He further submits that there is no compliance of Section 50 of the NDPS Act in the present case. He would further urge that the FSL report is totally silent about any batch number of the tablets received and tested by it. In the absence of any batch number of the tested tablets in the FSL report, it cannot be conclusively said that the same contraband which had been allegedly recovered from petitioner, had been tested by the Laboratory. He would further canvass that the FSL report remains totally unconnected with the bulk and the remaining sample after testing was not sent back so as to form the part of the case property. In this way, FSL report in the present case does not complete the chain of link evidence to bring home the guilt of petitioner.

3.2. Further submits that petitioner is in custody since 21.12.2020 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars. No other case is pending against him.

4. Per contra, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence and as such he is not entitled to concession of bail. He further submits that per custody certificate, petitioner was released on interim bail in this case from Central Jail, Ludhiana on 10.03.2021 and was again admitted in Borstal Jail, Ludhiana on 28.03.2021 in another FIR bearing No.37 dated 25.03.2021 under Section 21(c) of NDPS Act, registered at Police Station, Bassi Pathana. He further states that now petitioner is in custody in FIR No.37 *ibid* while in this case, custody period of petitioner is only 2 months and 16 days with effect from 24.12.2020 to 10.03.2021.

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, on instructions from ASI Hardam Singh, submits that challan was presented on 21.12.2020 and charges were framed on 07.07.2022. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Out of total 11 witnesses, 03 have been examined so far. Commencement/conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. 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 02 years and 09 months in preventive custody, being behind bars since 21.12.2020 (**though in custody in some other case**).

7. 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 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.

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

9. Petitioner is 34-year old married person, having a family comprising of wife and two children. Being a family man and fixed abode, it is unlikely that he is flight risk or will flee from the trial proceedings.
10. 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.
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 Judge, 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

September 20, 2023
Ajay

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