

Vipin Kumar

....Petitioner

Versus

State of Haryana

...Respondent

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

Mr. Vikas Bhardwaj, AAG, Haryana.

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.196 dated 12.07.2022, registered under Section 22C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Saha, Ambala.

2. Prosecution case is that on 12.07.2022, two accidental cars were found abandoned near Saini dhaba on Shahzadpur road. From one car a bag containing 6000 tablets of Lomotil (Diphenoxylate Hydrochloride and Atropine Sulphate Tablets IP) and 750 tablets of Tramanam-SR 100 (Tramadol prolonged release Tablets IP) were recovered. Similarly from the other car, a bag containing 42,000 tablets of Lomotil (Diphenoxylate Hydrochloride and Atropine Sulphate Tablets IPT), 80 small bottles of CHOCO (Codeine Phosphate & Chlorpheniramine Maleate) Syrup and 15 small bottles of Codectuss (Triorolidine Hydrochloride and Codeine Phosphate) Syrup were recovered. During the course of investigation, petitioner was arrested as a suspect on 23.08.2022 and is in custody ever since.

3. Learned counsel contends that petitioner has no concern with the alleged FIR. He submits that mandatory provisions of NDPS Act were not complied with in the present case. No independent witness was joined by the police party. Petitioner is not involved in any other case. He was arrested by the police on the basis of certain phone calls. He was not named in the FIR. Petitioner has thus been falsely implicated.

3.1 Learned counsel for the petitioner submits that petitioner is a property

owner of the car reflected that petitioner was in contact with him has found the basis of petitioner being arrested as a suspect. Other than that he has not been attributed any role either covert or overt. Petitioner is neither the owner of any of the cars nor was he driving the car, as per prosecution version. Nor is there any CCTV footage which reflects that petitioner was present at the site where the accident took place and offending vehicles were left unattended.

3.2. He 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.

4. 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 from justice. He submits that recovery of commercial quantity of tablets and syrups is involved. He, however, admits that no other case is pending against him, per custody certificate.

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 SI Reena, submits that challan was filed on 11.11.2022. Charges were framed on 15.02.2023. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Out of 18 prosecution witnesses, none has been examined till date. Commencement/conclusion of trial will take 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 in jail for the last more than 01 year, being in custody since 23.08.2022.

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 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.

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 stated to be 28-year old family person and is only breadwinner of his family. He has already lost his livelihood due to prolonged incarceration. Having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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, 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.

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 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.

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

(ARUN MONGA)
JUDGE

29.08.2023
vandana

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