

CRM-M-21489-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21489-2023 (O&M)

Date of decision: September 05, 2023

Gulshan Kumar

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Gurbir Singh Sidhu, Advocate,
Mr. Mohit Kumar, Advocate for petitioner.

Mr. Shubham Kaushik, AAG Punjab.

ARUN MONGA, J. (ORAL)**CRM-36448-2023**

Application herein is for correction in the head note of main petition wherein regular bail has been mentioned as First bail application instead of Second bail application.

For the reasons stated in application, same is allowed, subject to all just exceptions. Registry to carry out corrections, accordingly.

CRM-36449-2023

For the reasons stated in application, same is allowed. Copy of order dated 13.03.2023 passed in CRM-M-25660-2022 as Annexure P-3 is taken on record, subject to all just exceptions.

Main case (O&M)

This is the second foray of the petitioner seeking his release as an undertrial in a case bearing FIR No.93 dated 07.04.2022, registered under Sections 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, City 1 Malerkotla, District Sangrur, as first petition was dismissed as withdrawn vide order dated 13.03.2023 (Annexure P-3).

2. Per prosecution version, on 07.04.2022, a police party headed by ASI Satpal Singh was on duty in the evening/night at Adamwal road, Malerkotla. A person seen coming from the side of village Adamwal, carrying a transparent plastic bag in his

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right hand was signaled to stop with torch light. However, he threw the plastic bag and tried to turned back to flee. On the basis of suspicion, ASI apprehended him with the help of other police officials. He disclosed his name as Gulshan Kumar (petitioner). Out of the plastic bag, intoxicant tablets and vials were laying scattered on the ground. When counted, 15 vials of Cocrex (each vial containing 100 ml. liquid) having batch No.VHL2203048, Mfg. Date 03/2022, Exp. Date 02/2024, MRP No.143.00 and 50 strips of Alprsafe (each strip containing 10 tablets i.e., total No.500 tablets) having Batch No.PCCAA862, Mfg. Date 10/2021, Expiry Date 09/2024, MRP 24.76, were seized. An FIR was. Petitioner is in custody since then.

3. Learned counsel for the petitioner submits that narrative of the police was not corroborated by any of the independent witnesses. He submits that as per allegations, alleged recovery of contraband was effected from a transparent polythene, which is highly improbable that a person who indulges in narcotics trade would carry it in transparent polythene, being visible with naked eyes. The alleged contraband is a prescription medicine. Learned counsel would contend that as per allegations in the FIR, police party was on patrolling on private vehicles in flagrant violation of the guidelines issued by the Director General of Police regarding use of private vehicles.

3.1. Learned counsel further contends that nothing is to be recovered from the petitioner now and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. Petitioner is not involved in any other case.

3.2. Learned counsel fairly states that there is another FIR No.90 dated 22.06.2021 registered against the petitioner under NDPS Act at Police Station, Amargarh, but he is on interim bail in that case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is likelihood of petitioner fleeing

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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 Rajinder Singh, that challan was filed on 01.10.2022 and charges were also framed on 11.10.2022. Investigation is complete and petitioner is thus not required for custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against the petitioner are matter of trial at this stage. On a Court query, learned State counsel, on instructions, submits that out of total 15 witnesses, 05 have been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 01 year and 04 months, being behind bars since 07.04.2022.

8. 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.

9. 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 not likely to commit any offence while on bail.

10. Petitioner is stated to be a 28-year old family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

11. 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.

12. 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

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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.

13. In case, petitioner is found 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.

14. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

September 05, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No