

220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21522-2023 (O&M)

Date of decision: 09.08.2023

Mithu Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. K.S.Brar, Advocate for petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in case bearing FIR No.68dated 06.08.2022, registered under Sections 15(c) and 29of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Phul, District Bathinda.

2. Per prosecution version, FIR was registered on 06.08.2022 on the basis of suspicion and during routine petrol a chance recovery of 10 bags of poppy husk was made from the house of petitioner Mithu Singh. During investigation, it transpired that co-accused Sandhura Singh and Gurdial Singh brought the contraband in truck from Madhya Pradesh. 10 bags were supplied to petitioner and 5 bags were supplied to Sony Singh. Petitioner was arrested on 07.08.2022.

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. Petitioner was not present at the spot. Disclosure statement of co-accused, which is the basis of making the petitioner as a suspect, is not admissible evidence. Further argues that co-accused of the petitioner, namely, Sandhura Singh has already been accorded concession of bail by this court. Petitioner's case is at par with co-accused Sandhura Singh who is on bail and yet he continues to be in jail, he contends. He also argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial. 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, on instructions from Inspector Kuldeep Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. Co-accused Sandhura Singh confessed before the police that he brought 15 bags of poppy husk in truck No.PB-03H-7937 from Khalsa Dhaba Neemach (Madhya Pradesh). Petitioner, Mithu had disclosed that he had deposited Rs.1,00,000/- in the account of co-accused Sandhura Singh. She, however, admits that there is no other case registered against the petitioner.

4.1. Learned State counsel further contends that petitioner and his co-accused are running a racket of smuggling of poppy husk from Madhya Pradesh and supplying it in the State of Punjab. Recovery of contraband falls under commercial quantity and petitioner does not deserve the concession of bail.

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 submits that challan has already been filed and charges were framed on 01.02.2023. Trial has since 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. Trial is likely to take long time as it is proceeding at a snail pace. Out of total 18 witnesses, 2 have been examined. 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 01 year and 01 month in preventive custody.

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. 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 a family person having wife and four children, who are totally dependent on him and in his absence, they are living in sheer penury.
10. Co-accused/Sandhura Singh has been granted concession of bail by this Court vide order dated 19.07.2023. Role attributed to the petitioner appears to be at par with that of his co-accused Sandhura Singh. In the premise, I see no ground as to why petitioner should not be meted out with similar treatment.
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, 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.
13. 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.
14. 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.
15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

09.08.2023
vandana

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