

215

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22236-2023 (O&M)

Date of decision: 24.08.2023

Vaneet Kumar

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Monty Goyal, 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 an undertrial in a case bearing FIR No.24 dated 07.02.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, City Kurali, District SAS Nagar, Mohali.

2. Per FIR/prosecution case, on 07.02.2022, ASI Rajinder Singh along with Constable Ajit Kumar were on routine patrol in a private vehicle when petitioner, allegedly carrying a blue coloured bag was spotted. On seeing the police party, he tried to flee after throwing bag into the nearby bushes. On search, 872 strips of Lomofil tablets (each strip having 20 tablets total 17,440 tablets), 28 strips of Lomofil tablets (each strip having 20 tablets total 560 tablets), total 18,000 tablets were recovered. Petitioner was arrested from the spot. He is in custody ever since. Later on, per FSL report, the said tablets were found to be containing "Diphenoxylate Hydrochloride" and average weight of each tablet was 64 mg. Thus total weight of 18,000 tablets came to be $64 \times 18,000 / 1000 = 1152$ grams.

3. Learned counsel for the petitioner contends that in the present case, mandatory provisions of Section 50 of the NDPS Act were not complied with. No independent witness was joined by the police party. Learned counsel for petitioner

further urges that it is even debatable issue as to whether the alleged intoxicant tablets

belong to petitioner inasmuch as in the FSL report, even the batch number and manufacturing date and expiry date is/was not mentioned. Petitioner has no concern with the alleged recovery planted on him and is not even remotely connected with it. Petitioner is totally innocent and has been falsely implicated.

3.1. Learned counsel for petitioner 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. He further submits that no other case is pending against the petitioner.

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, possibility of his fleeing from trial proceedings cannot be ruled out, he being permanent resident of the State of Uttar Pradesh and is currently staying on rent in Kharar, District SAS Nagar. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. She however, admits that no other case is pending against him.

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 Rajpal, submits that challan was presented on 02.08.2022. Charges were framed on 30.05.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Allegations against petitioner are matter of trial at this stage. Out of 10 prosecution witnesses, none has been examined till date. Commencement/conclusion of the trial is likely to take quite sometime 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 more than 01 year and 06 months in preventive custody, being in custody since 07.02.2022.

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 a family person having wife and one minor child to look after, who are living in sheer penury in his absence.

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 in the sum of Rs.5 Lakh with one local surety of the like amount 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

24.08.2023
vandana

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