

CRM-M-22310-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-22310-2023

Date of decision: 11.10.2023

Kushal Kumar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.K. Singla, Advocate for the petitioner.

Mr. Hakam Singh, AAG, Punjab.

ARUN MONGA, J. (Oral)

Following the denial of bail by the learned trial court, the petitioner is now before this Court seeking his release as an undertrial in a case with FIR No.234 dated 29.11.2022, registered under Sections 22(C) and 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the City Budhlada, in Mansa.

2. An FIR was registered against the petitioner on November 29, 2022, based on secret information received by ASI Sukhpal Singh. The petitioner was apprehended near Pingalwara, Budhlada, on suspicion. 28 vials of Wincirex (each of 100 ML) and 280 tablets of Carisoma were recovered from the conscious possession of the petitioner. The petitioner has been in custody since their arrest on November 29, 2022.

3. The learned counsel for the petitioner contends that the alleged recovery was not made from the conscious possession of the petitioner but was planted on them. From the allegations outlined in the FIR, it is argued that no case is made against the petitioner, and the prosecution's narrative is an attempt to falsely implicate them. The learned counsel further submits that the entire

prosecution case relies on the testimony of official witnesses, raising doubts about the credibility of the prosecution story.

3.1 Furthermore, the petitioner's counsel asserts that there is no substantial evidence against the petitioner. The petitioner has nothing to do with the alleged offense, and the alleged recovery of contraband is doubtful. It is further submitted that the provisions of Sections 42, 50, and 52 of the NDPS Act have not been complied with.

3.2 He further submits that the petitioner has been in custody since November 29, 2022, and a challan has already been presented. The petitioner is not required for custodial interrogation. The conclusion of the trial will take a long time. Thus, no useful purpose would be served by keeping the petitioner behind bars.

3.3 The petitioner's counsel also argues that the petitioner does not need further custodial interrogation. There is no indication that the petitioner would tamper with evidence or influence prosecution witnesses. The petitioner asserts their innocence and claims to have been falsely implicated in the case.

4. On the other hand, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that according to the FSL Report, the alleged recovered quantity i.e. 28 vials of Wincirex (each of 100 ML) and 280 tablets of Carisoma would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case.

5. I have heard the rival arguments and reviewed the case file.

6. In response to a query from the Court, on instructions from ASI Daljeet Singh, learned State counsel informs that the challan was filed and charges were framed on March 24, 2023. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the fourteen

prosecution witnesses, none has been examined so far. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since November 29, 2022, for more than 10 months.

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. The documentary evidence is more in the nature of an FSL report regarding the contraband, has already been filed in the Court below and is not accessible to the accused. There is no probability of tampering with evidence as it has already been seized by the investigating agency. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

8. The offence allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. At this stage, the allegations against the petitioner are subject to trial. In any case, there appears to be a reasonable ground to believe that the petitioner may not be guilty of the alleged offense, and he is not likely to commit any offense while on bail.

9. The petitioner is stated to be the sole provider for his family with the additional duty to take care of his ailing parents. As a responsible family man with fixed abode, the petitioner is unlikely to pose a flight risk or evade 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 by keeping the petitioner in further preventive custody.

11. Accordingly, the 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 the learned trial Court where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.
12. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the 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 the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.
14. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 11, 2023
Ajay

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