

222

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-23711-2023 (O&M)****Date of decision: 04.09.2023**

Gurdeep Singh @ Raka

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Karamjit Singh Maangat, Advocate for petitioner.

Mr. Shubham Kaushik, AAG, 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.164 dated 26.07.2022, registered under Sections 21, 23, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Special Task Force, District SAS Nagar, Mohali.

2. Per prosecution version, a secret information was received that Gurbhej Singh and his brother Harbhej Singh, were doing the illegal business of sale of Heroin. Harbhej was already lodged in Central Jail, Amritsar, in connection with recovery of one kilogram Heroin. Harbhej Singh was allegedly having links with Pakistani smugglers and from Jail he was smuggling Heroin from Pakistan through drone. His brother, Gurbhej Singh under instructions of Harbhej Singh supplied the contraband to their customers. Accused Gurbhej Singh was later apprehended by SI Vinod Kumar with the help of other police officials in the presence of DSP Arun Sharma. From dashboard of the car he was driving, one polythene envelope containing 500 grams Heroin was recovered. Same was sealed and seized. Per report of Chemical Examiner, sample contained Diacetylmorphine. Later on, petitioner was arrested on 01.09.2022 on the basis of disclosure statement of his co-accused-Gurbhej Singh.

3. Learned counsel for the petitioner contends that no recovery has been effected from the possession of the petitioner. He submits that he has been implicated on the basis of disclosure statement of co-accused. He further submits that the provisions of Section 42 of the NDPS Act have not been complied with. Further contends that per Chemical Examiner's report dated 21.10.2022, it is stated that the sample contained Diacetylmorphine, but the percentage of the said substance was not given in the said report.

3.1. He further urges that further incarceration of petitioner would be violative of his right enshrined under Article 21 of the Constitution of India and bar of Section 37 NDPS Act can be diluted bearing in mind the right to a speedy trial, given that petitioner is behind bars since 01.09.2022 and trial is likely to take a long time to conclude.

3.2. He further 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.

3.3. Further submits that the principal accused namely, Gurbhej Singh and Harbhej Singh have been accorded the concession of regular bail by this Court vide orders dated 09.08.2023 passed in CRM-M-32056-2023 and 28.08.2023 passed in CRM-M-24469-2023 respectively.

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 further submits that recovery of contraband falls within the ambit of commercial quantity and rigors of Section 37 of the NDPS Act would be attracted in the present case. However, he admits that there is no other case pending against the petitioner.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. On a Court query, under instructions from SI Harbhej Singh, learned State counsel submits that challan has already been presented. Charges were framed on 06.05.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. There are 18 prosecution witnesses out of them, 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. Whereas petitioner has been languishing in jail for more than 01 year, being behind bars since 01.09.2022.

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 Court below 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. Co-accused have already been granted concession of bail by this Court.

10. Petitioner is stated to be 39-year old family person. He is sole breadwinner of his family and they are living in sheer penury in his absence. Being

a family person with clean antecedents, it is unlikely that he is flight risk 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 on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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

04.09.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No