

CRM-M-26932-2023 (O&M)

226

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26932-2023 (O&M)

Date of decision: August 18, 2023

Sucha Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Ms. Himani Anand, Advocate for petitioner.

Mr. Mohit Thakur, 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.158 dated 04.10.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Sections 27 and 29 of NDPS Act added later on), at Police Station, Anaj Mandi, District Patiala.

2. Per prosecution version, on 04.10.2022 at about 8:45 p.m., one person was seen coming on motorcycle was intercepted by police official on suspicion. Said person disclosed his name as Gurdhian Singh. On his search, a ploythene envelope tied on the handle of the motorcycle, containing 90 strips Lomotil containing 60 tablets each and 5 strips of Alprasafe 0.5 containing 10 tablets each, was recovered. Per FSL report, ingredients detected is Diphenoxylate Hydrochloride and the average weight of tablets was found to be 64 mg/ tablet i.e., total weight $5,400 \times 64 \text{ Mg/ tablet/ } 1000 = 345.6 \text{ grams}$. In the disclosure statement, Gurdhian Singh stated that said intoxicating tables were handed over to him by the petitioner. Pursuant thereto, petitioner was arrested on 07.02.2023 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the basis of custodial disclosure statement of principal accused, namely Gurdhian Singh. She submits that petitioner was not named in the FIR and alleged contraband was recovered from co-accused. Custodial statement of co-accused is not admissible evidence. She further submits that alleged contraband, i.e. a prescription medicine- Lomotil does not fall within the definition of 'manufactured drug'. Petitioner is not involved in any other case. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of

CRM-M-26932-2023 (O&M)

petitioner cannot be ruled out. 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 ASI Ranjit Singh, 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. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/or tampering with evidence and influencing witnesses.

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 informs that challan has been filed. Investigation is thus complete and he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Given the snail's pace, trial is likely to take long time as despite filing of charge-sheet it has not proceeded any further. Whereas, petitioner has already been languishing in jail for the last more than 6 months in preventive custody, being behind bars since 07.02.2023.

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. 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.

9. Petitioner is stated to be a 38-year old married person having wife and two minor children, and one of them is suffering from polio who needs his constant care and attention. Apart therefrom, he has added responsibilities of looking after his parents and his entire family is dependent on him. Being a family man and having fixed abode with clean antecedents, it is

unlikely that he poses any flight risk and/or will flee from the trial proceedings.

CRM-M-26932-2023 (O&M)

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, in case 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.
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

August 18, 2023
mahavir

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