

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29073-2022 (O&M)

Date of decision: 20.07.2023

Rohit Rajput @ Kalu

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Charanpreet, Advocate for petitioner.

Mr. Sandeep Kumar, DAG, Punjab

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in a case bearing FIR No.48 dated 14.03.2022, registered under Sections 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, STF, District SAS Nagar.

2. Per prosecution version, petitioner Rohit Rajput @ Kalu was apprehended on 14.03.2022 by a police party on a secret information and was found in possession of 257 grams of heroin contained in a polythene envelope. Formal FIR was registered. Petitioner was taken into custody and investigation was carried out.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. No recovery was effected from him. He also submits that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. 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 quantity of contraband alleged recovered is marginally higher than the commercial quantity. He would further urge that per prosecution version, alleged recovery effected in present case is including the weight of polythene bag and if the same is excluded and

error in weight is taken into account, the alleged recovered contraband would come under the head of 'non-commercial'.

4. On the other hand, learned State counsel, on instructions from ASI Litesh Rai opposes the bail petition. He submits that petitioner has committed a serious offence. He contends that commercial quantity of contraband was recovered from the conscious possession of petitioner and bar of Section 37 of NDPS Act will apply. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He further submits that petitioner is a previous convict and there are three more cases registered against him, one under Section 307 of IPC, second under Sections 323, 341, 452, 148 read with Section 149 of IPC and third case under Sections 307, 506 IPC and 25 of Arms Act against the petitioner. Out of which, only in one case under Section 307 IPC he is on bail. In the other case, his production warrants has been issued.

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

6. In the case in hand, on a Court query, state counsel submits that challan has already been presented and charges were framed. There are total 16 witnesses, out of them two have been examined and five witnesses have given up. Trial has since commenced, petitioner is thus not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time. Whereas, petitioner has already been in jail for the last more than 1 year and 04 months in preventive custody, he being behind bars from 14.03.2022. 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.

7. Petitioner is stated to be 28-year old, unmarried person and has lost his livelihood because of his continued incarceration. Further preventive custody will severely jeopardize his career in getting employment. It is unlikely that he is flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime.

8. 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.

9. 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.

10. 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.

11. 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.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

20.07.2023
Vandana

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