

222

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-29481-2023 (O&M)****Date of decision: 28.08.2023**

Gurjeet Singh @ Gittaa

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sandeep Kumar Passi, 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.152dated 02.09.2022, registered under Section 22of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), (Section 27 of NDPS Act was added later on) at Police Station, City 1, Mansa, District Mansa, Punjab.

2. Per prosecution version, on 02.09.2022, in the area of Police Station, City-I, Mansa, petitioner along with co-accused was found in possession of 40 intoxicant tablets and 1000 ML intoxicant liquid without any permit or licence.

Per FSL report, one parcel containing 1000 ML of orange colour liquid on being analyzed by the Chemical Analyst, the ingredients of that parcel was found containing Codeine Phosphate and Chlorpheniramine Maleate. One parcel containing 40 loose tablets, the ingredients of that parcel was found containing Tramadol Hydrochloride. The weight of each tablet was 382.64 mg and thus, the total weight of 40 tablets comes to $40 \times 382.64 \text{ mg} / 1000 = 15.30$ grams approximately of intoxicant substance containing Tramadol Hydrochloride. As per report of Chemical Examiner, the total weight of Codeine Phosphate comes to be 1224.0 grams (1000 ml x 1.224 g/ml). Petitioner was arrested on 02.09.2022.

2.1 Petitioner was admitted to interim bail by learned Judge Special Court, Mansa, vide order dated 29.10.2022 awaiting the FSL report. Vide order dated 20.01.2023, after receiving the FSL report, recovery being commercial quantity, interim bail order dated 29.10.2022 stood vacated and petitioner was taken into custody on 20.01.2023 and he is in custody ever since.

3. Learned counsel contends that petitioner never misused the concession of bail privilege. He was never declared as proclaimed offender. He further submits that mandatory provisions of NDPS Act were not complied with in the present case. No independent witness was joined by the police party. Alleged recovery has been planted on him. Petitioner has thus been falsely implicated. Petitioner is not involved in any other case.

3.1. He 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.

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, there are chances of his fleeing from justice. 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 Modan Singh, submits that challan was filed on 04.01.2023 and charges were framed on 20.01.2023. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of 13 prosecution witnesses, 03 have been examined so far.

Conclusion of trial will take some time 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 the last more than 07 months, being in custody since 20.01.2023.

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. 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 28-year old person, who is aspiring candidate for clearance of IELTS and has lost his livelihood due to prolonged incarceration. Having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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 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 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

28.08.2023
vandana

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