

CRM-M-31257-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 19.09.2023

Ajay Kumar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manoj R. Sharma, Advocate for the petitioner.

Mr. DhruvDayal, Addl.A.G., 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.26 dated 10.02.2023, registered under Sections 21(b), 25, 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Dinanagar, District Gurdaspur.

2. Per FIR, ASI YousufMasih along with other police officials was on routine patrolling duty. A secret information was received that accused Satnam Singh @ Satti and her wife Sunita were indulging in sale of heroin. They were enroute on a two wheeler from village ChaniBeli (Himachal Pradesh) to Dinanagar. Accordingly, on the day of occurrence, a barricade was erected at the disclosed place and at about 10:15 pm. A scooter was seen coming which was being driven by a boy with one lady as a pillion. They were signaled to stop. On seeing the police party, they got perplexed and tried to turn back but were apprehended by the police party. On checking 100 grams heroin along with one electronic scale and drug money of Rs.1,50,000/- were recovered from the boot of scooter. During the course of investigation, they disclosed that they had procured 01 kg of heroin from one Manjit Singh and sold the same to Ajay Kumar

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(petitioner herein), Vishal Kumar and Deepak Kumar. Accordingly, on the basis of aforesaid disclosure statement, petitioner was arrested and was nominated as an accused.

3. At the outset, learned counsel for the petitioner contends that co-accused of petitioner namely Manjit Singh @ Mithu and Deepak Kumar @ Deepu have been granted the concession of pre-arrest bail by this Court and coordinate Bench, as per order dated 25.07.2023 passed in CRM-M-12051-2023 and 04.05.2023 passed in CRM-M-19934-2023.

3.1. Learned counsel for the petitioner contends that petitioner has been nominated as accused on the basis of disclosure statement alleged to be made by Satnam Singh @ Satti from whom the police is stated to have recovered 100 grams of heroin and drug money and one electronic weighting machine. He contends that veracity and evidentiary value of said disclosure statement is subject matter of the trial.

3.2 He further submits that recovery effected in this case falls under non-commercial quantity. Investigation is over. Moreover, nothing has been recovered from the petitioner and, thus, no useful purpose would be served by keeping him behind bars.

3.3 He further argues that petitioner is not required for custodial interrogation. Petitioner is in custody since 16.04.2023. Challan has already been presented before the competent Court. 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. 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. Moreover, petitioner is involved in 05 other cases under NDPS Act and 01 under IPC.

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

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6. On a Court query, learned State counsel, on instructions from ASI Naresh Kumar, submits that challan was filed on 04.08.2023 but charges have not been framed. Trial has since commenced, petitioner is thus not required for custodial interrogation. Out of total 15 witnesses, none has been examined so far. Trial is likely to take long time as it is proceedings at a snail pace. Allegations against petitioner are matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for 04 months and 23 days in preventive custody, being behind bars since 16.04.2023.

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 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. 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. 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 37 years old family person having fixed abode. It is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. Co-accused have been granted the concession of pre-arrest bail by this Court and coordinate Bench.

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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 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.
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 herein above 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

September 19, 2023
Ajay

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