

221

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31392-2023 (O&M)

Date of decision: 16.08.2023

Shivam

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ritesh Pandey, 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 undertrial in a case bearing FIR No.198 dated 13.08.2022, registered under Section 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, City Mandi Gobindgarh, District Fatehgarh Sahib (Punjab).

2. Per FIR, SI Satwinder Singh along with other police officials were on routine patrolling in a government vehicle. When they reached near Super Milk Plant, Mandi Gobindgarh, one motorcycle Hero Honda Splender on which three persons were riding, on seeing the police party tried to turn around and flee. They were apprehended. Person riding the motorcycle disclosed his name as Vivek Kumar @ Sahil. He was having one bag (violet in colour) on his shoulder. Middle pillion rider disclosed his name as Shivam (present petitioner), who too was having one blue coloured bag on his shoulder. Other pillion rider disclosed his name as Shanant, who was too had a carry bag in his right hand. Petitioner Shivam was found in conscious possession of 90 intoxicant injections Buprenorphine 2 ML each and 90 vials of Avil 10 ML each and co-accused Shanant was found in conscious possession of 8 intoxicant injections Buprenorphine 2 ML each make Leegesic and 8 vials of Avil 10 ML each, while another co-accused Vivek Kumar @ Sahil was found in possession of 90 intoxicant injections Buprenorphine 2 ML each and 90 vials of Avil 10 ML each. Hence, total recovery of 188 intoxicant injections Buprenorphine each having 2 ML and 188 vials of Avil 10 ML each were recovered from

all of them, without any valid license or permit. Petitioner is in custody in this case since 13.08.2022.

3. Learned counsel for petitioner *inter alia* contends that entire recovery of the contraband has been planted on the petitioner who had merely sought a lift on the motorcycle from the main accused Vivek Kumar, who was wearing a back pack on his shoulders containing all of 188 injections buprenorphine 2 ml each and 188 vials of Avil 10 ml each. He further submits that entire recovery was from the prime accused and merely to fasten the culpability on the petitioner, as well as, on the other co-accused, the recovery was segregated in three parts.

3.1. Learned counsel for petitioner further argues that it is patently unpalatable that 3 persons on the motorcycle would be carrying contraband in equally divided proportion and the same itself is suggestive that recovery has been planted.

3.2 Learned counsel for the petitioner further submits that petitioner has been falsely implicated in this case. He further contends that in the present case, provisions of Section 42 of the NDPS Act were not complied with. He further urges that provisions of Section 100 (4) Cr.P.C. have also not been complied with, as no independent witness was joined by the police party. Petitioner is not involved in any other case.

3.3 Further argues that co-accused of the petitioner, namely, Shanant has already been accorded concession of bail by a coordinate Bench of this Court. Petitioner's case is at par with co-accused Shanant, who is on bail and yet petitioner continues to be languishing in jail, he contends. He also argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial. 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, on instructions from SI Satwinder Singh, 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. Learned State counsel further contends that no parity can be claimed by petitioner with co-accused Shanant, who was found in conscious possession of contraband which was of non-commercial quantity. 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 submits that challan was filed on 03.03.2023 and charges were framed on 22.03.2023. Trial has since commenced, petitioner is thus not required for custodial interrogation. Out of total 23 witnesses, only one has been examined so far. Trial is likely to take long 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 01 year in preventive custody, he being in custody since 13.08.2023.

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 a young undergraduate student aged 22 years, who has recently finished his senior secondary school (10+2) and is on the cross-roads of his career, which would forever jeopardize his future. He has already 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. Co-accused Shanant has been granted concession of bail by this Court vide order dated 31.05.2023 (Annexure P-4).

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, 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.

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

16.08.2023
vandana

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