

CRM-M-31463-2023 (O&M)

219

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31463-2023 (O&M)

Date of decision: September 05, 2023

Sita Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Hitesh Verma, Advocate for petitioner.

Mr. Shubham Kaushik, 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.61 dated 25.09.2022, registered under Sections 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Rureke Kalan, District Barnala.

2. Per prosecution version, on 25.09.2022, Sub-Inspector Gurbachan Singh, CIA Barnala along with other police officials, was on duty near Bus Stand, Dhanaula. At about 4:00 pm., he received a secret information that Bunty Singh is habitual of selling intoxicant tablets in the area of village Dhanula. If raided, he could be apprehended along with intoxicant tablets. Finding the information credible, *ruqa* was sent. FIR was registered. SI Gurbachan Singh along with other police officials then apprehended Bunty Singh and from his possession, 500 loose intoxicant tablets (as per FSL, it was/is Tramadol Hydrochloride) were recovered. During interrogation, Bunty Singh disclosed that said tablets were supplied to him by Sita Singh (petitioner). Petitioner was also arrested on 26.09.2022 and on the basis of his disclosure statement on 27.09.2022, another 800 intoxicant tablets were recovered (as per FSL, it was also Tramadol Hydrochloride).

3. Learned counsel for the petitioner that complainant and Investigating Officer are the same. Various documents viz. Memo of Arrest (Annexure P-3), Memo of personal search (Annexure P-4), Memo of confession (Annexure P-5) contain thumb impression of

CRM-M-31463-2023 (O&M)

petitioner, but memo of recovery (Annexure P-6) vide which intoxicating tablets were allegedly recovered, does not contain thumb impression of the petitioner.

3.1. Learned counsel urges that there is non-compliance of provisions of Section 50 of the NDPS Act.

3.2. He contends that petitioner has been implicated in this case on the basis of disclosure statement of co-accused, namely Bunty Singh. Petitioner was neither named in the FIR nor was present at the spot.

3.3. Learned counsel further contends that nothing is to be recovered from the petitioner now and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

3.4. Learned counsel for petitioner further argues that alleged contraband recovered was marginally higher than the non-commercial quantity. He would further urge that per prosecution version, alleged recovery effected from petitioner in the 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'.

3.5. Learned counsel for the petitioner also contends that co-accused of the petitioner, namely Bunty Singh who was apprehended at the spot, has already been granted concession of bail by a co-ordinate Bench of this Court vide order dated 22.11.2022 passed in CRM-M-53105-2022.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that on the basis of disclosure statement of petitioner, commercial quantity of contraband recovered from him was 800 loose tablets (Tramadol Hydrochloride) and as per FSL report, weight of each tablet is 323.33 mg/ tablet, thus, making total of 258.5 grams, therefore, rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He further submits that petitioner is involved in 09 other cases

CRM-M-31463-2023 (O&M)

(06 under NDPS and 03 under Excise Act), out of which, in 07 cases, he has been convicted, in 01 case, he has been acquitted and now, 01 case is pending under trial.

4.1. Per contra, learned counsel contends that previous cases, in which petitioner was involved, should not weigh in the mind of the Court and what has to be seen is the allegations in the FIR in question. In support thereof, he relies on a decision of Apex Court rendered in **Maulana Mohd. Amir Rashadi versus State of U.P. and another¹**.

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 Satnam Singh, states that challan has been presented and even charges were framed on 05.05.2023. Investigation is complete and petitioner is thus not required for custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against the petitioner are matter of trial at this stage. On a Court query, learned State counsel, on instructions, submits that out of total 13 witnesses, none has been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 11 months, being behind bars since 26.09.2022.

8. 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.

9. 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

CRM-M-31463-2023 (O&M)

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.

10. Petitioner is stated to be a 42-year old person working as helper in a shop and has two children to look after who are living in sheer penury in his absence. Being a family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

11. Co-accused have been given concession of bail by this court.

12. 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.

13. 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.

14. 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.

15. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

September 05, 2023
mahavir

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