

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-31827 OF 2020 (O&M)
DATE OF DECISION: 20.07.2023**

Kala @ Laddi**...Petitioner****Versus****State of Punjab****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Gaurav, Advocate for
Mr. P. S. Sekhon, Advocate,
For the petitioner.

Mr. Virat Rana, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.205 dated 15.07.2020, registered under Sections 22 and 29 of Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to "NDPS Act"), at Police Station Bhawanigarh, District Sangrur.

2. Per FIR, based on a secret information on 15.07.2020, petitioner was apprehended by the police and 2000 tablets of Clovidol 100 SR containing salt Tramadol were recovered from his possession. 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. The mandatory provisions as prescribed under Sections 42 and 50 of NDPS Act have not been complied with. No independent witness was joined before search nor search was made before a Gazetted officer. Alleged recovery has been shown to be effected after sunset but no special warrants were obtained before conducting the search. Learned counsel further contends that per prosecution version, police party was patrolling in a private vehicle but neither the registration number nor ownership details of said vehicle have been disclosed by the prosecution.

4. Learned counsel would further argue that challan has been presented on 06.01.2021 and till date not even a single witness has been examined. Petitioner is a poor person and is labourer/daily wager. He has two minor children who are also being deprived of parenthood as wife of petitioner is residing separately due to some matrimonial dispute and is also not able to look after the children.. That apart, in the absence of their parents, children are not able to go to school and are deprived of regular meals of the day. Children are finding it very difficult to pursue their daily pursuits in the absence of petitioner. Currently paternal grandfather of the children (father of petitioner), who is a nonagenarian, is looking after the children.

5. On the other hand, learned State counsel, on instructions from ASI Bhagwan Singh opposes the bail petition. He states that in case petitioner is granted concession of bail, there are chances of his fleeing. He further submits that petitioner is a habitual offender as he is involved in two other cases of similar nature and one under Section 376 IPC. Per contra, learned counsel for petitioner submits that petitioner is on bail in both the cases pending under NDPS Act.

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

7. Challan has been presented in the present case and even charges have also been framed. Petitioner is not required for custodial interrogation. Trial is proceeding further at a snail pace. Out of total 14 witnesses, no one has been examined till date. Trial is thus still likely to take long time, whereas petitioner has already been languishing in jail for the past more than three years in preventive custody.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Petitioner is being kept in custody merely on suspicion that if he is let out, he may either tamper with evidence and/or influence witnesses. There is no documentary evidence except FSL report *qua*

contraband already filed in the trial Court to which accused has no access. There is no probability of tampering with said 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. Any such apprehension by the prosecution appears to be unfounded.

9. Petitioner is stated to be 31-year old family person having two minor children and his old aged father to look after. He is the sole bread earner of his family. His wife has already left him and his family is living in sheer penury in his absence.

10. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody. Considering the overall scenario and without commenting on the merits of the case, the instant petition deserves being allowed.

11. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/ 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/disposal of the instant bail petition alone and learned trial Court shall proceed in accordance with law without being influenced with this order.

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

JULY 20, 2023

Shalini

(ARUN MONGA)

JUDGE

Whether speaking/reasoned :

Yes/No

Whether reportable :

Yes/No