

CRM-M-32004-2023 (O&M)

225

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32004-2023 (O&M)

Date of decision: October 17, 2023

Tarsem Singh @ Ninja

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. J.K. Singla, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case bearing FIR No.91 dated 30.11.2022, registered under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Sadar Budhlada, Police Station in Mansa.

2. According to the First Information Report (FIR), on November 30, 2022, ASI Pawitar Singh received information from MHC that HC Sukhjinder Singh, along with a police party, had apprehended three individuals along with a motorcycle bearing registration No. PB-13-BC-9957 near Beas Ghar, Bhikhi-Budhlada Road, in the area of village Gurne Kalan. They were suspected of carrying some intoxicant substance. ASI Pawitar Singh and the police party arrived at the scene and questioned the apprehended individuals who identified themselves as Sukhpal Singh, Tarsem Singh (the petitioner), and Manjot Singh. During a search, ASI found a transparent polythene bag on the motorcycle's seat, revealing intoxicant tablets. There were a total of 200 strips (10 tablets each), making it 2000 intoxicant tablets marked as Tramadol Prolonged-release Tablets IP TRAMWEL SR 100. According to the FSL report, the content of the 2000 intoxicant tablets was identified as Tramadol Hydrochloride, with an average weight of 375.57 mg

CRM-M-32004-2023 (O&M)

per tablet, totaling 715.14 grams. An FIR was registered, and the accused were arrested, with the petitioner remaining in custody since that time.

3. The petitioner's counsel argues that the alleged recovery from the transparent plastic bag was planted. They contend that the petitioner did not have conspicuous possession of the alleged contraband and did not commit the alleged offense. Additionally, they point out non-compliance with mandatory provisions of Sections 42, 50, and 57 of the NDPS Act.

3.1. Furthermore, the learned counsel emphasizes that nothing incriminating was found in the petitioner's immediate possession, suggesting that the petitioner has been wrongfully arrested in this case. The petitioner is not involved in any other case.

3.2. Finally, the counsel asserts that there is no need for further custodial interrogation as there is nothing to be recovered from the petitioner, and there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition, arguing that the petitioner has committed a serious offense. If the petitioner is granted bail, there are chances of her fleeing from trial proceedings. He submits that the recovery of contraband falls within the ambit of a commercial quantity, and the rigors of Section 37 of the NDPS Act would be attracted in this case. He however, admits that petitioner is not involved in any other case.

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

6. In response to a query from the Court, under instructions from ASI Jaswinder Singh, learned State counsel submits that challan has already been filed and charges were framed on 08.05.2023. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of nineteen witnesses, two have already been examined so far. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In

CRM-M-32004-2023 (O&M)

contrast, the petitioner has been in detention since November 30, 2022, for more than 10 months.

8. The investigation regarding the petitioner is over, but he is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report concerning the contraband, which has already been filed in the Court below and is inaccessible to the accused. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

9. Be that as it may, the offense allegedly committed by the petitioner is non-violent in nature, and in that sense, her release on bail does not pose a threat to society at large in terms of 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 not likely to commit any offence while on bail.

10. The petitioner is stated to be a 22-year-old having wife who is suffering from ovarian cyst. He has added responsibilities of his old age parents to look after. Being a family man and having fixed abode, it is unlikely that he is a flight risk or will flee from the trial proceedings.

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 by keeping the petitioner in further preventive custody.

12. Accordingly, the petitioner is ordered to be released on bail, if not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the Ld. trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

13. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of her bail in the instant case.

CRM-M-32004-2023 (O&M)

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.
15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No