

CRM-M-35049-2022 (O&M)

216

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35049-2022 (O&M)

Date of decision: July 19, 2023

Palwinder Singh @ Pinder Choohe

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)**CRM-28417-2022**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petitioner seeks bail in case bearing FIR No.235 dated 28.08.2021, registered under Sections 21-C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Mandi Gobindgarh, District Fatehgarh Sahib, Punjab.

2. Per prosecution version, on 28.08.2021, 300 grams of heroin and drug money of Rs.1,25,000/- was recovered from conscious possession of one Ashwani Kumar @ Monu. Later on, petitioner was nominated under Section 29 of the NDPS Act and arrested on 03.09.2021.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that petitioner was not named in the FIR and no recovery was effected from him. Disclosure statement of co-accused is not an admissible evidence. He also submits that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation.

CRM-M-35049-2022 (O&M)

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 ASI Sukhwinder Singh 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. Learned State counsel further contends that petitioner is a previous convict and there are four more cases against the petitioner out of which, in two cases he is on bail and in the other two cases, he has been convicted and sentenced to undergo rigorous imprisonment of 10 years and 20 years respectively. On a Court query, he submits that challan has already been filed and charges were framed on 24.03.2022. There are total 25 witnesses, out of them none has been examined so far.

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

6. Challan is stated to have been filed and even charges have already been framed and trial has commenced, petitioner is thus not required for custodial interrogation. There are total 25 witnesses but none been examined so far. In the present case, petitioner was not named in the FIR and has been implicated on the basis of disclosure statement of co-accused. Be that as it may, same shall be adjudicated by the Court below after conclusion of trial. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the last more than 1 year and 10 months in preventive custody, being behind bars from 08.09.2021.

6.1. 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.

CRM-M-35049-2022 (O&M)

7. Petitioner is stated to be sole bread winner having family comprising widow mother and younger brother who are dependent on him and in his absence, they are living in sheer penury. His father died in 2014.
8. 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.
9. 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.
10. 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.
11. 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.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 19, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No