

CRM-M-36167-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 05.09.2023

Sarabjit Singh @ Sarban

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. H.S. Bhogal, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in case bearing FIR No.194 dated 19.11.2021 registered under Sections 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Sidhwan Bet, District Ludhiana.

2. Per prosecution version, on 19.11.2021, a secret information was received by the police party that petitioner and his accomplice Manjit Singh are into sale of intoxicant substance. A police picket was laid. Petitioner and co-accused-Manjit Singh coming on motorcycle were intercepted and apprehended on suspicion. From their possession recovery of 4,500 intoxicant tablets were recovered. FIR was registered. Petitioner has been in custody since 19.11.2021.

3. Learned counsel for the petitioner submits that mandatory provisions of NDPS Act have not been complied with. Learned counsel further urges that alleged recovery was not effected from the conscious possession of petitioner, but has been planted on him. Moreover, there is long delay in sending the samples to FSL.

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3.1 This aside, he further argues that nothing is to be recovered from the petitioner 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.

3.2 Further submits that petitioner is in custody since 19.11.2021 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars. Petitioner is the only breadwinner of the family and there is no one to look after his family.

4. Per contra, learned State counsel, on instructions from ASI Harwinder Singh, opposes the bail petition and submits that petitioner has committed a serious offence. He submits that petitioner is involved in two other cases, one under the NDPS Act and another case under Section 379-B, 411 read with 34 IPC. He further submits that petitioner is also a convict in a case under NDPS Act. Further contends that petitioner was found in possession of heavy quantity of intoxicant substances and, therefore, not entitled to concession of bail.

4.1 In rebuttal, learned counsel for the petitioner submits that in two pending cases, petitioner has already been granted bail while in the case in which he was convicted, he has undergone the sentence.

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

6. Challan was presented on 17.05.2022 and charges were framed on 21.07.2022. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. On a Court query, learned State counsel, on instructions from ASI Harwinder Singh, submits that out of 10 witnesses, none has been examined so far. Allegations against petitioner are matter of

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trial. Commencement/conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for more than 01 year and 9 months, being behind bars since 19.11.2021.

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 Court below 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. 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 34 years old married person, having a family and fixed abode. Being a family man, it is unlikely that he is flight risk or will flee from the trial proceedings.

10. 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.

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, where his case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

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

(ARUN MONGA)
JUDGE

September 05, 2023
Ajay

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