

CRM-M-36146-2023 (O&M)

220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36146-2023 (O&M)

Date of decision: August 01, 2023

Kailash

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in criminal case bearing FIR No.283 dated 28.07.2022, registered under Sections 15B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Mohindergarh, District Mahendergarh.

2. Per prosecution version, on secret information, police party apprehended one person coming from village Bhaloth side. Upon asking, he disclosed his name as Vikash son of Abhay Singh. Search was conducted and *doda post* was recovered from a plastic bag carried by him. Same weighed 12 kg. 950 grams. Petitioner had no permit or licence qua the same. An FIR was registered. During investigation, petitioner was later arrested on 27.04.2023 as a suspect/co-accused of Vikash and is in custody ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that petitioner was not named in the FIR and no recovery was effected from him. Petitioner has been nominated in this case on the basis of disclosure statement of accused-Vikash, which is not an admissible evidence. Petitioner was not even present at the spot. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. Further

CRM-M-36146-2023 (O&M)

argues that the contraband recovered from petitioner falls in 'non-commercial category'. Case of the petitioner is on better footing as prime accused-Vikash, from whom recovery was effected, and he has been granted bail vide order dated 28.09.2022 by learned Court below, but yet petitioner is in jail, he contends.

4. On the other hand, learned State counsel, on instructions from ASI Sunil Kumar, opposes the bail petition. He submits that petitioner has committed a serious offence. In case, he is let out on bail, there are chances of his fleeing from justice. Learned State counsel further submits that there is no other case pending against the petitioner.

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 informs that challan was filed and charges were framed on 06.06.2023. Investigation is thus complete and petitioner is not required for custodial interrogation. 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 languishing in jail for the last more than 3 months in preventive custody, being behind bars since 27.04.2023.

7. Allegations against petitioner are matter of trial. 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.

8. Petitioner is stated to be 20-year old young boy who is studying in B.A. 2nd year from Jaipur and having a family and fixed abode, it is unlikely that he will flee from the trial proceedings.

CRM-M-36146-2023 (O&M)

9. Co-accused from whom alleged recovery was made has already been let out on bail.
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, 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.
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 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

August 01, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No