

CRM-M-35341-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.10.2023

Bikramjit Singh @ Bikka

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. L.M. Gulati, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Custody certificate of the petitioner dated 08.10.2023 has been tendered in court by learned State counsel, and it is taken on record.

2. 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 with FIR No.160 dated 07.06.2023, registered under Sections 21(b), 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the Special Task Force, STF Wing in S.A.S. Nagar (Mohali).

3. The FIR was registered against the petitioner and his co-accused, Gurwinder Singh @ Raja, on June 7, 2023, based on secret information received by Inspector Balwinder Singh. Gurwinder Singh @ Raja was apprehended by Inspector Balwinder Singh with the assistance of other police officials, in the presence of DSP Varinder Kumar. They recovered a polythene envelope containing 100 grams of Heroin, which was tied around his waist with the help of a white 'Parna' (cloth). He was arrested on the spot. During interrogation, co-accused Gurwinder Singh @ Raja made a disclosure statement that he obtained 100 grams of Heroin from Bikramjit Singh @ Bikka (petitioner herein) and had to pay the cost of the said Heroin to him. A phone call was made from co-accused

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Gurwinder Singh @ Raja's mobile phone to the mobile number of the petitioner. Then, the petitioner informed on the phone that he was standing near Sabzi Mandi, Khandwala Park, on his Acura. The police party reached the spot and apprehended the petitioner. In the presence of DSP Varinder Kumar, a search of the Honda Acura was conducted, and 160 grams of Heroin wrapped in a polythene envelope was recovered from the boot space of the Acura of the petitioner. In total, 260 grams of Heroin were recovered from the conscious possession of the petitioner and his co-accused Gurwinder Singh. The petitioner has been in custody since his arrest on June 7, 2023.

4. Learned counsel for the petitioner contends that prima facie, no case is made out against the petitioner. Nothing has been recovered from the conscious possession of the petitioner. There is non-compliance with Section 50 of the NDPS Act, and no independent witness was joined by the police party. The petitioner is not a previous convict.

4.1 He further submits that the quantity of contraband recovered from the petitioner is 160 grams, which falls under the category of a non-commercial quantity. The strict provisions of Section 37 of the NDPS Act would not be attracted in this case.

4.2 He further submits that the petitioner is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses. The petitioner is entirely innocent and has been falsely implicated in the case.

4.3 The co-accused of the petitioner, namely, Gurwinder Singh @ Raja, has been granted bail by this Court, vide order dated 05.10.2023, passed in CRM-M-46765-2023. Thus, he is also entitled to the concession of bail, is the contention.

5. On the other hand, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He, however, admits that no other case is pending against the petitioner. He submits that according to the FSL Report, the alleged recovered quantity of 260 grams of Heroin would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case.

5.1 In rebuttal, learned counsel for the petitioner submits that although both recoveries, i.e., 100 grams and 160 grams of Heroin, cannot be clubbed, even for the sake of argument, if the prosecution's version is taken at face value, the alleged contraband recovered was marginally higher than the non-commercial quantity. He further argues that, according to the prosecution's version, the alleged recovery includes the weight of polythene bags, and if these are excluded, and an error in weight is taken into account, the recovered contraband would fall under the category of 'non-commercial.'

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

7. In response to a query from the Court, under instructions from ASI Kashmir Singh, learned State counsel informs that the challan was filed on August 05, 2023. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the fourteen prosecution witnesses, none have been examined so far. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since June 7, 2023, for more than 04 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence

witnesses. There is no documentary evidence, and it is more in the nature of an FSL report regarding the contraband, which has already been filed in the Court below and is not accessible to the accused. There is no probability of tampering with evidence as it has already been seized by the investigating agency. 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. The offence allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. At this stage, the allegations against the petitioner are subject to trial. In any case, there appears to be a reasonable ground to believe that the petitioner may not be guilty of the alleged offense, and he is not likely to commit any offense while on bail.

10. The petitioner is stated to be 31-year old person and is an Electrician by profession with the additional duty of caring for his ailing parents. He is the sole provider for his family, which is currently living in dire poverty in his absence. As a responsible family man with a clean record and a stable residence, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

11. Co-accused Gurwinder Singh @ Raja has already been granted the concession of bail by the Court below. I see no reason why the petitioner should not be meted with the similar treatment.

12. 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.

13. Accordingly, the petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of the learned 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.

14. 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 his bail in the instant case.

15. 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.

16. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 09, 2023
Ajay

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