

CRM-M-36097-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 25.09.2023

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....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Riffi Birla, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG Punjab.

ARUN MONGA, J. (Oral)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.272 dated 03.12.2022, registered under Sections 22(c), 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 25 of the Arms Act, 1959 (Section 29 of the NDPS Act added later on), at Police Station, Sadar, District Fazilka.

2. Per FIR, a letter dated December 3, 2022, was received at Police Station Sadar, Fazilka, issued by Commander G/55 Bn, BSF. In the letter, it was stated that on December 3, 2022, at approximately 00:05 hours, BSF guards, who were performing sentry duty at BOP Sowarwall, heard a humming sound from a suspected drone flying from the Pakistan side. They immediately informed the Officiating Company Commander, Inspector Anil Basumatary, and HC Pyarelal Bhatt. They chased the aforementioned flying object/drone and moved towards its direction. In the meantime, they observed some suspicious movement in the agricultural field. It was alleged that during a joint operation with the local Punjab Police, the search party found 3 large-sized packets of contraband, suspected to be heroin, wrapped in yellow adhesive tape, along with 1 pistol, 2 magazines, and 50 rounds of 9mm ammunition, out of which 35 rounds were found filled in a mug. Upon opening the 3 large packets, 9 small packets of heroin were discovered.

Subsequently, during a morning search at around 07:50 hours, they came across a bundle wrapped in a woolen shawl, which was lying in an agricultural field approximately 50 meters away from the initial place of recovery. In this manner, a total of 26.850 kilograms of heroin, along with packing material, 1 pistol, 2 magazines, 50 rounds of 9mm ammunition, 2 woolen shawls, 2 white cloth bags, 1 grey carry bag, and one woolen cap were recovered. Based on the aforementioned letter, an FIR was registered against unknown individuals.

2.1. The petitioner was nominated as an accused, vide DDR No.22 dated December 16, 2022, based on the disclosure statement of co-accused Tarsem Singh. Tarsem Singh stated that the aforementioned recovery of 26.850 kilograms of heroin, along with 1 pistol, 2 magazines, and 50 live cartridges, was smuggled by the petitioner along with other co-accused individuals, namely Ravi Kumar, Kuldeep Singh, Tarsem Singh, Pala Singh, and Sukhwinder Singh. Accordingly, the petitioner was arrested on December 16, 2022, and during his interrogation, he admitted to smuggling the contraband along with ammunition from Pakistan. The petitioner also led to the recovery of an amount of Rs.2,50,000/- as drug money.

3. Learned counsel for the petitioner contends that alleged confessional statement of the petitioner was not video-graphed and was obtained on a piece of paper by making him put his thumb impression. Being illiterate, petitioner had no knowledge of what was written, while putting his thumb impression. Further argues that petitioner is working in agricultural fields owned by one Sukhwinder Singh and Manbir Singh for the past 10 years and has got clean antecedents. Being a poor agricultural labourer, he has been made an easy scapegoat by other co-accused. She further points out that the wife of the petitioner also works as a domestic helper/maid in the houses of nearby villages and the amount of Rs.2,50,000/- allegedly recovered from petitioner is his and his wife's life time savings. Petitioner has 04 minor daughters of marriageable age and he and his wife have been saving the money to be utilized in their marriages.

3.1 She also submits that petitioner was not named in the FIR and has been nominated on the basis of custodial disclosure statement of co-accused, namely, Tarsem

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Singh, which is not admissible evidence. Petitioner has nothing to do with the alleged offence and alleged recovery of contraband is doubtful.

3.2. She further submits that petitioner is in custody since 16.12.2022 and challan has already been presented. Petitioner is not required for custodial interrogation. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

3.3 Per contra, learned State counsel strenuously opposes the petition. He submits that petitioner has committed a serious offence. He further contends that recovery of alleged drug money of Rs.2,50,000/- as well as 50 live cartridges were recovered from his possession. If enlarged on bail, there is every likelihood that petitioner will commit similar offence and/or will flee from trial. The alleged recovery of contraband effected by the police falls within the ambit of commercial quantity and rigors of Section 37 of NDPS Act would be attracted in the present case. He, however, admits that petitioner is not involved in any other case.

4. I have heard rival contentions of learned counsels and have gone through the case file.

5. On a Court query, learned State counsel, on instructions from SI Jugraj Singh, submits that challan was presented on 01.06.2023. Investigation *qua* petitioner is complete, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Out of total 33 witnesses, none has been examined till date. Trial is proceeding at a snail's pace. Whereas, petitioner has already been languishing in jail for the past more than 09 months, being behind bars since 16.12.2022.

6. 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.

7. Allegations against petitioner are matter of trial. 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.

8. It is stated that petitioner is 30-year old agriculturist/field worker having family comprising of wife and 04 minor daughters. They all are living in sheer penury in his absence. Being family man and having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

9. 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.

10. Accordingly, petitioner is ordered to be released on bailon his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where his cases is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

11. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing 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

September 25, 2023
Ajay

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