

CRM-M-37166-2023 (O&M)

235

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37166-2023 (O&M)

Date of decision: August 18, 2023

Manjit Singh @ Manjeet Singh @ Mani

....Petitioner

versus

State of U.T., Chandigarh

....Respondent

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

Mr. A.M. Punchhi, P.P. U.T., Chandigarh.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, it is second foray of the petitioner seeking his release as an undertrial in a case bearing FIR No.354 dated 02.10.2018, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, South 34, Chandigarh.

2. Per prosecution version, on 02.10.2018 at about 04:15 p.m., one person was seen coming from Burail side towards Sector 45/ 50 dividing road by the police officials on duty. On seeing police party, he turned back and started moving swiftly in opposite side. He was apprehended. He disclosed his name as Manjit Singh @ Mani (petitioner). A polythene bag was recovered from hi. It contained two card boxes of white colour containing 25 injections of Buprenorphine 2 ml each in one card box and its batch no etc. was not readable. Other card box was also found containing 25 injections of Phenramine 10 ml each and its batch no. etc. was also not readable. Petitioner was arrested on the spot. He was earlier granted bail vide an order dated 25.02.2019. However, he jumped the bail condition as he did not appear before trial court on hearing dated 02.11.2022 followed by hearing dated 09.12.2022. His bail was cancelled. He was declared a proclaimed offender on 17.05.2023. Subsequently, he was arrested on 27.05.2023 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner was earlier granted

CRM-M-37166-2023 (O&M)

Court below on regular basis. On 22.07.2022, case was fixed for prosecution evidence and he appeared, but case was adjourned to 15.09.2022. On 15.09.2022, petitioner was out of station as his close relative was not well and sought exemption from his personal appearance through his counsel. Case was accordingly, adjourned to 02.12.2022. On 02.12.2022, due to some family problems, petitioner could not appear and his non-bailable warrants were issued for 09.12.2022. On 09.12.2022, bail of the petitioner was cancelled and bail bonds and surety bonds were forfeited to the State. Also fresh non-bailable warrants were issued for 16.02.2023.

3.1. Learned counsel further contends that non-bailable warrants issued by learned Court below were not executed and again issued for 23.03.2023. He refers to *zimni* orders (Annexures P-3 to P-9) in this regard. Thereafter, proclamation under Section 82 Cr. P.C. was issued against the petitioner without following the due procedure. On 17.05.2023, petitioner was thus wrongly declared as a proclaimed offender. He further contends that petitioner has been all through under extreme mental stress and suffering extreme depression and thus could not appear on 02.11.2022 as well as the subsequent hearing. His non-appearance was neither intentional nor willful.

4. On merits, counsel would contend that petitioner has been falsely implicated. He submits that even the mandatory provisions of Section 50 NDPS Act were not complied with. He submits that, in any case, alleged recovery made from petitioner is of prescription medicine/drugs, which were meant for self consumption over long duration, if at all.

5. On the other hand, learned counsel for respondent-U.T., Chandigarh, on instructions from police official, opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable. He also submits that petitioner has misused the concession of bail granted to him and his bail order was rightly cancelled and bail/ surety bonds were forfeited to the State. He further submits that 6 witnesses have been examined, 1 has been partly examined and only 04 are left to be examined, therefore, trial is nearing conclusion. If released on bail, there is

CRM-M-37166-2023 (O&M)

likelihood of petitioner again fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He though admits that there is no other case against the petitioner.

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

7. Concededly, petitioner was earlier granted concession of bail vide order dated 25.02.2019 by a co-ordinate Bench of this Court. On 15.09.2022, an application was moved on behalf of the petitioner seeking exemption from personal appearance, which was allowed by learned trial Court and the case was posted for 02.11.2022 for evidence of prosecution. On 02.11.2022, petitioner remained absent without any intimation and his presence was sought through non-bailable warrants for 09.12.2022. On 09.12.2022, petitioner did not appear before learned Court below and his bail was cancelled and bail/ surety bonds were forfeited to the State. Though learned trial Court observed that presence of the petitioner could not be secured through non-bailable warrants, but there is no finding given in the order dated 17.05.2023 while declaring him proclaimed offender that the service of non-bailable warrants had indeed been effected, and yet petitioner deliberately chose not to appear. In the premise, it appears that the trial court was rather too swift in declaring the petitioner a proclaimed offender without following the mandatory procedure.

8. Be that as it may, bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is proceeding rather at a snail pace. Whereas, petitioner has already remained in custody from 03.10.2018 to 26.02.2019 and now again been languishing in jail for the last more than 2 months in preventive custody, being behind bars since 27.05.2023. Thus his total undertrial period is more than 7 months.

9. 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

CRM-M-37166-2023 (O&M)

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.

10. In any case, 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.

11. Petitioner is stated to be a 32-year old person having family and fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

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 to keep the petitioner in further preventive custody.

13. 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.

14. 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.

15. 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.

16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 18, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No