

211

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40691-2023 (O&M)

Date of decision: 25.08.2023

Amrit Pal Singh @ Kaka

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rajiv Kumar Saini, Advocate for petitioner.

Ms. Guramrit Kaur, DAG, 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.51 dated 07.11.2021, registered under Section 21, 22, 29, 29-A, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Kotli Surat Malhi Police, District Batala, Gurdaspur.

2. Per prosecution version, on 06.11.2021, one Ezik Masih @ Billa was apprehended on the basis of suspicion who threw one envelope on the ground when he saw the police party. 10 grams of heroin and 100 intoxicant tablets-tramadol hydrochloride contained in the envelope were recovered. Said accused was arrested on the spot. During interrogation, he disclosed the name of petitioner and one Love Khokhar and the offence under Section 29 of NDPS Act was added. Petitioner was then arrested on 09.11.2021. He also made a custodial confessional statement that he procured intoxicant tablets from one Bhinder Singh in order to sell the same to customers. From his disclosed place, 1110 intoxicant tablets of Alprazolam and Rs.70,000/- in cash were recovered. On the disclosure statement of petitioner, Bhinder Singh was thus nominated as accused. As per FSL report, the quantity of contraband has been found to be 135.66 grams "Alprazolam" which is commercial quantity.

3. Learned counsel for the petitioner would argue that petitioner was not named in the FIR and no recovery was effected from him. Disclosure statement of co-accused, obtained in police custody, is not *per se* admissible evidence. Petitioner was not

even present at the crime scene. Alleged recovery has been planted on him. Petitioner has thus been falsely implicated. Petitioner is not involved in any other case.

3.1 Further argues that co-accused of the petitioner, have already been accorded concession of bail by this Court and a coordinate Bench of this Court. Petitioner's case is better than the co-accused who are on bail and yet, petitioner continues to be in jail, he contends. On that ground alone, petitioner is entitled to be released on bail during pendency of trial, he argues.

3.2 He also submits that 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.

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. She however, admits that no other case is pending against him.

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, on instructions from ASI Harjinder Singh, submits that challan was filed on 05.07.2022 and charges were framed on 19.07.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Out of 12 prosecution witnesses, one has been examined so far. Conclusion of trial will take some time as it is proceeding at a snail pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 01 year and 09 months, being in custody since 09.11.2021.

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 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. 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. 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 unlikely to commit any offence while on bail.

9. Petitioner is stated to be 32-year old only bread earner of his family comprising of wife and two minor children, who are living in sheer penury in his absence. He has already lost his livelihood due to prolonged incarceration. He is not a threat to society in any manner and not flight risk in any manner, given that he has a family to look after and has a fixed abode.

10. Co-accused have been granted concession of bail by this Court vide order dated 17.05.2023 and 20.07.2023 (Annexures P-2 and P-3).

11. 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.

12. Accordingly, petitioner is ordered to be released on bail, if 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.

13. 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.

14. 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.

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

(ARUN MONGA)
JUDGE

25.08.2023
vandana

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