

CRM-M-40023-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

232

CRM-M-40023-2023

Date of decision: 22.08.2023

Harmesh Singh

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (Oral)

Custody certificate of the petitioner has been tendered in Court by learned State counsel, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.66 dated 03.09.2022, registered under Sections 22 and 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Budhlada, District Mansa.

3. Per prosecution version, a police party, on suspicion, intercepted two persons on 03.09.2022, who disclosed their names as Harmesh Singh (present petitioner) and Jagtar Singh. On search, 1200 tablets of Alprasafe 0.5 mg were recovered from their possession. Both accused were arrested on the spot. An FIR was registered. Later on, per FSL report, weight of each tablet, containing intoxicant substance-Alprazolam, was found to be 122.84 mg. Thus, total weight of 1200 tablets comes to $1200 \times 122.84 \text{ mg}/1000 = 147.40 \text{ grams}$. Petitioner is in custody since 03.09.2022.

4. Learned counsel for petitioner submits that alleged recovery from petitioner is a prescription medication, namely, Alprasafe, which is also required for treatment as well as used to cure anxiety disorder and panic disorder. Petitioner has been falsely implicated in this case. He further submits that alleged recovery is

highly doubtful/suspicious since the same was found in a transparent polythene bag and it is highly unlikely that a person committing offence in question will carry the contraband in a transparent bag. He further submits that despite availability, no independent witness was joined in investigation while effecting the search and provisions of Section 100(4) Cr.P.C. were thus not complied with. Learned counsel further urges that alleged recovery was not effected from the exclusive and conscious possession of petitioner. It is highly doubtful that documents were prepared at the spot or not and the entire investigation is thus vitiated.

4.1. That aside, he further argues, there was no compliance of even the mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. Petitioner was not found in conscious possession of the alleged contraband. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

4.2 Learned counsel contends that similarly situated co-accused Jagtar Singh has been accorded the concession of bail by this Court, as per order contained at Annexure P-3.

5. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. The recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act are applicable. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/or tampering with evidence and influencing witnesses. Learned State counsel though admits that there is no other case pending against the petitioner.

CRM-M-40023-2023

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

7. On a Court query, learned State counsel, on instructions from ASI Jeet Singh, informs that challan was filed and charges were framed on 22.12.2022. Investigation is thus complete and he is not required for custodial interrogation. Allegations against the petitioner are a matter of trial at this stage. Out of total 11 witnesses, only 01 has been examined so far. Trial is likely to take long 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 languishing in jail for the last 11 months in preventive custody, being behind bars since 03.09.2022.

8. 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.

9. 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 not likely to commit any offence while on bail.

10. Petitioner is stated to be 47-year old married person having wife and two minor children. He has added responsibilities of his father aged 75 years, who is a cancer patient. Petitioner being a sole bread-winner, they all are dependent on

CRM-M-40023-2023

him and in his absence, are living in sheer penury. Petitioner having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

11. On court query, learned state counsel does not controvert that co-accused of petitioner, namely, Jagtar Singh has already been granted the concession of bail by this Court vide order dated 03.08.2023 (Annexure P-3).

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 22, 2023
Ajay

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