

213

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42340-2022 (O&M)

Date of decision: 25.09.2023

Navjot Singh @ Jota

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Balbir Singh Jaswal, Advocate,
For the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Custody certificate of the petitioner dated 23.09.2023 has been tendered in course of hearing, 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.176 dated 19.11.2019, registered under Section 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 25 of Arms Act, 1959 (Section 411 of IPC added later on) at Police Station, City Batala, District Gurdaspur.

3. Per prosecution version, on 19.11.2019, petitioner and three other co-accused were travelling in a white coloured car, which was intercepted by the police officials. Upon personal search of the petitioner, one country made pistol of .32 bore along with seven live cartridges of the same bore were recovered from his possession, without any license. From co-accused Ajay @ Ajay Masih, 260 grams heroin and one country made pistol of .32 bore along with 7 live cartridges, from another co-accused country made pistol of .30 bore with 6 live cartridges, co-accused Gurwinder Singh @ Baba one country made pistol of 32 bore with 6 live cartridges and 2 rifles of .12 bore were also recovered from the car in which they were travelling as well as live cartridges of .32 bore lying in the dashboard of the said car were also recovered. Petitioner was taken into custody on 19.11.2019. FIR was registered.

4. Learned counsel for the petitioner submits that there are violations of Sections 42 and 43 of NDPS Act and as such, mandatory provisions of the Act were not

followed during the alleged recovery. He further argues that no independent /public witness or gazetted officer were associated during the recovery process. Petitioner has thus been falsely implicated in the present case, due to rivalry with co-accused.

4.1 Learned counsel would argue that as regards the invocation of offence under Arms Act is concerned, the maximum punishment provided therein is 7 years *qua* the offence and alleged role attributed to the petitioner. Even if he were to be convicted given the duration of custody, he is entitled to seek suspension of sentence.

4.2 Be that as it may, he submits that alleged recovery of pistol which has been attributed to the petitioner was planted on him and he had nothing to do with the same and in any case, same would be proved only in the trial.

4.3 Learned counsel 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.

5. On the other hand, learned State counsel opposes the bail petition. He 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. He further submits that 23 other cases are pending against him.

6. In rebuttal, learned counsel for the petitioner submits that out of 23 cases, petitioner is on bail in 10 cases, in 2 cases he has been acquitted, whereas in 04 cases, he is on production warrants and in 07 cases, he is in the process of taking steps to seek bail. His acquittal in cases where trial is over goes to show that police officials have falsely implicated the petitioner in every case for collateral purpose.

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

8. On a Court query, learned State counsel, on instructions from ASI Rajinderpal Singh, submits that challan was filed on 16.05.2020 and charges were framed on 25.11.2021. Investigation *qua* the petitioner is complete. Petitioner is thus not required

for custodial interrogation. Out of 13 prosecution witnesses, one has been examined. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for more than 03 years and 10 months, being in custody since 19.11.2019, as per custody certificate.

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 investigating agency.

10. 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.

11. Petitioner is stated to be 30-year old family man. He has already lost his livelihood due to prolonged incarceration. He is the only breadwinner of his family. They are living in sheer penury in his absence. Having family responsibilities and fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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, 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.

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

25.09.2023

vandana

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