

CRM-M-41440-2023 (O&amp;M)

217

## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41440-2023 (O&amp;M)

Date of decision: August 25, 2023

Dalbir Singh

....Petitioner

versus

State of Punjab

....Respondent

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

Ms. Guramrit Kaur, DAG Punjab.

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**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.391 dated 17.10.2022, registered under Section 21(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Goindwal Sahib, District Tarn Taran.

2. Per prosecution version, on 17.10.2022, police party headed by ASI Jasbir Singh apprehended Shamsher Singh (driver of the Scooty) and Dalbir Singh (petitioner-pillion rider) on a suspicion at a *nakabandi* (barricade). Shamsher Singh opened the boot of the scooty and threw a polythene packet on the ground which contained 270 grams of Heroin. Petitioner is in custody since then.

3. Learned counsel for the petitioner submits that alleged recovery of 270 grams of Heroin is marginally higher than the non-commercial quantity (250 grams being commercial). He submits that alleged recovery was not from possession of the petitioner. He states that petitioner was merely a pillion rider, who sought lift from co-accused who was rider/ owner of the scooter and petitioner had no knowledge of the alleged contraband carried by him in the boot of the scooter. Being just a pillion rider of principal accused has led to an unfounded suspicion of prosecution that petitioner is also his accomplice. Petitioner has thus been falsely implicated in this case.

3.1. Learned counsel further contends that there is violation of provisions of Sections 50, 52-A of the NDPS Act. Nothing is to be recovered from the petitioner and he is

## CRM-M-41440-2023 (O&amp;M)

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. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. She further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. She also submits that petitioner is involved in another case under Section 304 IPC.

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 Mashwinder Singh, informs that challan has already been filed, and charges were framed on 18.04.2023. Investigation is thus complete and he is not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of total 11 witnesses, none 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 almost 10 months, being behind bars since 17.10.2022.

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

CRM-M-41440-2023 (O&M)

reasonable ground that petitioner may not be guilty of the alleged offence. He is not likely to commit any offence while on bail.

9. Petitioner is stated to be a 43-year old agriculturist as he has taken land on lease for cultivation of crops and has got family comprising wife and three minor children, who are living in sheer penury in his absence. Being a family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

10. 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.

11. 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.

12. 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.

13. 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.

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

(ARUN MONGA)  
JUDGE

August 25, 2023  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No