

CRM-M-42604-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 05.09.2023

Vivek Kumar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ritesh Pandey, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

This is second foray of the petitioner seeking his release as an undertrial in a case bearing FIR No.198 dated 13.08.2022, registered under Sections 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, City Mandi Gobindgarh, District Fatehgarh Sahib. His earlier petition was dismissed as withdrawn vide order dated 17.04.2023 (Annexure P-6) passed in CRM-M-57500-2022.

2. Per FIR, on 13.08.2022, SI Satwinder Singh along with other police officials were on routine patrolling in a government vehicle. When they reached near Super Milk Plant, Mandi Gobindgarh, three persons riding on one motorcycle were spotted. On seeing the police party, they tried to turn around in panic and flee. They were apprehended on suspicion. Person riding the motorcycle disclosed his name as Vivek Kumar @ Sahil. He was having one bag (violet in color) on his shoulder. Middle pillion rider disclosed his name as Shivam, who too was having one blue coloured bag on his shoulder. Other pillion rider disclosed his name as Shanant, who was too had a carry bag in his right hand. From their possession, 188 intoxicant injections Buprenorphine each having 2 ML and 188 vials of Avil 10 ML each were recovered, without any valid licence or permit. They were arrested. During investigation, they named the petitioner as the one from whom they used to buy

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Narcotic injections. Petitioner was arrested on 30.08.2022. Recovery of 350 intoxicant injections Buprenorphine each having 2 ML and 350 vials of Avil 10 ML each, was effected from his conscious possession. Petitioner is in custody since 30.08.2022.

3. At the outset, learned counsel for the petitioner contends that another co-accused Shivam, from whom huge recovery of contraband was effected and was arrested on spot, has been granted the concession of bail by this Court, as per order dated 16.08.2023, Annexure P-5, while the petitioner, whose case is on much better footing, is languishing in jail.

3.1 On merits, he submits that petitioner was neither named in the FIR nor apprehended at the spot. He also submits that petitioner has been nominated on the basis of custodial disclosure statement of co-accused, which is not *per se* admissible evidence. Petitioner has nothing to do with the alleged offence and alleged recovery of contraband is doubtful. Further contends that after recording the disclosure statement of his three co-accused, police raided the house of petitioner at village Kishanpura, Jamalpur, Roorkee, District Haridwar. He was arrested from his house and nothing was recovered from him. After arrest, petitioner was taken to Police Station, Mandi Gobindgarh. Alleged recovery of 350 intoxicant injections Buprenorphine (2 ml each) and 350 vials of Avil (10 ml each) was though shown to have been effected from the conscious possession of petitioner, but was actually planted on him. Actually, the contraband had already been recovered from the other three co-accused when they were apprehended on motorcycle by the police. Thus, petitioner has been falsely implicated in this case. The aforesaid recovery is totally planted upon petitioner.

3.2. He further argues that petitioner is not required for custodial interrogation. Yet, petitioner is in custody since 30.08.2022. Challan has already been presented before the competent Court. 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. 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. He further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. Moreover, petitioner is involved in one more case under NDPS Act.

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 SI Satwinder Singh, submits that challan was filed on 03.03.2023 and charges were framed on 22.03.2023. Trial has since commenced, petitioner is thus not required for custodial interrogation. Out of total 23 witnesses, only one has been examined so far. Trial is likely to take long time as it is proceedings at a snail pace. Allegations against petitioner are matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for more than one year in preventive custody, being behind bars since 30.08.2022.

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 Court below 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. 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 a young undergraduate aged 23 years and is on the cross-roads of his career, which would forever jeopardize his future. He has already lost his livelihood due to prolonged incarceration. Having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. Co-accused-Shivam has been granted concession of bail by this Court vide order dated 16.08.2023.

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 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 herein above 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

September 05, 2023
Ajay

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