

CRM-M-43571-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43571-2023 (O&M)

Date of decision: September 13, 2023

Bohar Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Karandeep Singh Sidhu, Advocatefor petitioner.

Mr. ShubhamKaushik, AAG Punjab.

ARUN MONGA, J. (ORAL)

CRM-38168-2023

For the reasons stated in application, same is allowed. Annexure P-6 is taken on record, subject to all just exceptions.

Main case (O&M)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.140 dated 01.12.2022, registered under Section22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’) (Section 29 of NDPS Act added later on), at Police Station, Lakho Ke Behram, District Ferozepur.

2. According to the prosecution case, on 01.12.2022, on the basis of secret information, petitioner (motorcycle rider) and co-accused, namely, Nirvail Singh (pillion-rider) were apprehended by the police party while riding a motorcycle. On search of plastic bag carried by them on motorcycle, recovery of 5000 intoxicant tablets of Tramadol Hydrochloride 100 Mg. (Clovedol-100SR) was effected. They were arrested on the spot and are in custody since then. On the basis of disclosure of petitioner, co-accused Om Parkash was nominated and an offence under Section 29 of NDPS was added, vide Rapat No.21 dated 05.12.2022.

3. Learned counsel for the petitioner submits that petitioner is totally innocent and he was just being a good Samaritan, since on the request of co-accused, he merely gave him lift on his motorbike. He had no knowledge of the contents of bag which he was carrying. He has thus unwittingly been caught into this case. Prosecution case against him

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based on a presumption that since two of them were going together, petitioner had knowledge of the contents being carried by co-accused/pillion rider. Counsel submits that petitioner has no mutual connection with co-accused and they are not even known to each other.

3.1. Learned counsel further contends that no independent witness was joined by the police, which creates a doubt in the prosecution story. There was violation of mandatory provisions of NDPS Act as offer, as per law, was not given by the I.O. He was neither taken before a gazetted officer or Magistrate nor was any of them called at the spot. There is also violation of Sections 42, 50 and 52 of NDPS Act, he contends. Nothing was recovered from conscious possession of the petitioner. Petitioner has thus, been falsely implicated in this case.

3.2. Learned counsel further contends that 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. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He 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 every likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He, however, admits that petitioner is not involved in any other case.

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

6. On a Court, learned State counsel, on instructions from ASI Gurdeep Singh submits that challan has already been filed on 30.05.2023. Investigation *qua* petitioner is thus complete and petitioner is not required for custodial interrogation.

7. 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 the past more than 09 months, being behind bars since 01.12.2022.

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.

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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.

10. 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.

11. Petitioner is stated to be a 23-year old. Having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from the 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 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. 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.

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

(ARUN MONGA)
JUDGE

September 13, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No