

CRM-M-43580-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-43580-2023

Date of decision: 10.10.2023

Kuldeep Singh @Sonu

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jashandeep Singh Sandhu, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Following the denial of bail by learned trial court, the petitioner is now before this Court seeking his release as an undertrial in a case bearing FIR No.272 dated 03.12.2022, registered under Sections 21(c), 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), (Section 27-B of the NDPS Act added later on) and Section 25 of the Arms Act, 1959, at the Sadar, Police Station in Fazilka.

2. According to the prosecution's account, a letter dated December 3, 2022, was received at Police Station Sadar, Fazilka, issued by Commander G/55 Bn, BSF. In the letter, it was stated that on December 3, 2022, at approximately 00:05 hours, BSF guards, who were performing sentry duty at BOP Sowarwall, heard a humming sound from a suspected drone flying from the Pakistan side. They immediately informed the Officiating Company Commander, Inspector Anil Basumatary, and HC Pyarelal Bhatt. They chased the aforementioned flying object/drone and moved towards its direction. In the meantime, they observed some suspicious movement in the agricultural field. It was alleged that during a joint operation with the local Punjab Police, the search party found 3 large-sized packets of contraband, suspected to be heroin, wrapped in yellow adhesive tape, along with 1 pistol, 2 magazines, and 50 rounds of 9mm ammunition, out of which 35 rounds were found filled in a mug. Upon opening the 3 large packets, 9 small packets

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of heroin were discovered. Subsequently, during a morning search at around 07:50 hours, they came across a bundle wrapped in a woolen shawl, which was lying in an agricultural field approximately 50 meters away from the initial place of recovery. In this manner, a total of 26.850 kilograms of heroin, along with packing material, 1 pistol, 2 magazines, 50 rounds of 9mm ammunition, 2 woolen shawls, 2 white cloth bags, 1 grey carry bag, and one woolen cap were recovered. Based on the aforementioned letter, an FIR was registered against unknown individuals.

2.1. The petitioner was nominated as an accused based on the disclosure statement of co-accused Tarsem Singh @ Sema. Tarsem Singh stated that the aforementioned recovery of 26.850 kilograms of heroin, along with 1 pistol, 2 magazines, and 50 live cartridges, was smuggled by the petitioner along with other co-accused individuals, namely, Ravi Kumar, Pala Singh, and Sukhwinder Singh. Accordingly, the petitioner was arrested on January 30, 2023 and, is in custody ever since.

3. Foremost, learned counsel for the petitioner contends that the petitioner's role is comparable to that of co-accused Dular Chand Dass @ Dular Chand @ Sonu, who has already been granted bail by this Court through an order dated September 25, 2023, in CRM-M-36097-2023. Based on the principle of parity alone, petitioner should be granted bail during the trial's pendency.

4. Furthermore, the petitioner's counsel asserts that there is no substantial evidence against the petitioner. Petitioner was not named in the FIR and has been nominated on the basis of disclosure statement of co-accused, namely, Tarsem Singh, which is not admissible evidence. Petitioner has nothing to do with the alleged offence and alleged recovery of contraband is doubtful. Further submits that provisions of Sections 42, 50 and 52 of the NDPS Act have not been complied with.

4.1. He further submits that petitioner is in custody since January 30, 2023 and challan has already been presented. Petitioner is not required for custodial interrogation. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

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5. On the other hand, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that alleged recovered quantity falls within the category of commercial quantity and thus, rigors of Section 37 of the NDPS Act would be attracted in this case. On Court's query, learned State counsel does not dispute the fact that role attributed to the petitioner, based on the custodial disclosure statement of the prime accused, is same as that of the other co-accused namely Dular Chand Dass @ Dular Chand @ Sonu, who has been granted the concession of bail. He, however, submits that petitioner is involved in another FIR under NDPS Act.

6. I have heard the rival arguments and reviewed the case file.

7. In response to a query from the Court, on instructions from ASI Milak Singh, learned State counsel informs that the challan was filed on June 01, 2023. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the thirty three prosecution witnesses, none has been examined so far. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since January 30, 2023, for more than 09months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. The documentary evidence is more in the nature of an FSL report regarding the contraband, has already been filed in the Court below and is not accessible to the accused. There is no probability of tampering with evidence as it has already been seized by the investigating agency. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

9. The offence allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. At this stage, the allegations against the petitioner are subject to trial. In any case, there appears to be a reasonable ground to believe that the

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petitioner may not be guilty of the alleged offense, and he is not likely to commit any offense while on bail.

10. The petitioner is stated to be the sole provider for his family with the additional duty to take care of his ailing parents. As a responsible family man with fixed abode, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

11. Co-accused Dular Chand Dass @ Dular Chand @ Sonuhas already been granted the concession of bail by the Court below. I see no reason why the petitioner should not be meted with the similar treatment.

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 by keeping the petitioner in further preventive custody.

13. Accordingly, the 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 the learned trial Court where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

14. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the 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 the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

16. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 09, 2023
Ajay

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

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