

CRM-M-43950-2023 (O&M)

227

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43950-2023 (O&M)

Date of decision: September 12, 2023

Balwinder Singh @ Khanda

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Shubham Kaushik, AAG Punjab.

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.6 dated 05.01.2014, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Dakha (now Sadar Jagraon), District Ludhiana.

2. According to the prosecution case, on January 5, 2014, at around 02:30 PM, when a police party was on routine patrol. When police vehicle was approximately 500 yards away from the Link Road village of Chowkiman, a person was spotted walking there. Upon seeing the police party, the individual turned left onto a kacha passage and began walking towards the wheat fields. Sub-Inspector Sukhwinder Singh stopped the vehicle and called out for him. The person was apprehended with the assistance of fellow officials. When questioned, he identified himself as Balwinder Singh, also known as Khanda (the petitioner). SI Sukhwinder Singh introduced himself, and the police party informed the petitioner that there was suspicion of him carrying an objectionable substance in his possession. Consequently, they needed to conduct a search. The petitioner was informed of his legal right to request a search in the presence of a gazetted officer or a Magistrate. However, the petitioner expressed his trust in Investigating Officer SI Sukhwinder Singh. He admitted to having some intoxicant powder in his possession. A separate consent statement was prepared in this regard, and SI Sukhwinder Singh conducted the search. A white powder (later identified as Dextropropoxyphene

CRM-M-43950-2023 (O&M)

Hydrochloride according to the FSL report) was recovered from a black polythene bag kept in the right pocket of the petitioner's lower trousers, weighing 100 grams. The seized contraband was duly sealed. The petitioner failed to produce any license, permit, or bill related to the possession of 100 grams of intoxicant substance. Petitioner was arrested on the spot. An FIR was registered.

2.1. Petitioner was earlier also released on bail by learned trial Court. However, during the trial, he did not appear before the learned trial Court on 03.02.2016. He was eventually declared a proclaimed offender. Petitioner was again arrested on 14.09.2022 and is in custody since then.

3. Qua the default of non-appearance before the trial court, learned counsel for the petitioner submits that petitioner was admitted in a De-addiction Centre, Jalalabad and thus, due to circumstances beyond control, could not appear before Court below. Petitioner was though declared as proclaimed offender on 03.02.2016 but he actually never absconded and continued to live at his native place. In between due to Covid period nothing effective was happening either on prosecution front or progress of trial and due to communication gap between petitioner and his counsel he remained under the impression that resumption of regular court work he would be sent fresh notice by the trial court. However, on resumption of regular work in the courts, petitioner was again arrested on 14.09.2022. He is in custody since then. He submits that merely 100 grams of contraband was allegedly recovered from the petitioner, which is non-commercial in nature (500 grams being commercial). He further urges that bar contained in Section 37 of NDPS Act would not be attracted in case of petitioner.

3.1. 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 submits that petitioner is involved in one other case under Section 229-A IPC, but he is on bail in that case. He

CRM-M-43950-2023 (O&M)

further submits that petitioner was earlier granted bail, but he misused the concession of bail. If released on bail, there is every likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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

6. Learned State counsel, on instructions from ASI Rakesh Kumar, submits that challan was filed on 07.10.2022. Investigation *qua* petitioner is thus complete and petitioner is not required for custodial interrogation.

7. There is reasonable explanation given by the petitioner *qua* his earlier default in appearance before the trial court as already noted herein above. Given that it was merely 100 grams of contraband powder, that too apparently for self-consumption, and given that petitioner was already on bail, in the ordinary circumstances it is highly unlikely that anyone would jump bail.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against the petitioner are matter of trial at this stage. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has remained in jail for around one year and 03 months, being behind bars since 14.09.2022 and prior to that, remained under incarceration from 05.01.2014 to 05.04.2014.

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. 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.

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

Whether reportable:	Yes/No
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