

CRM-M-45108-2023 (O&M)

209

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-45108-2023 (O&M)

Date of decision: September 15, 2023

Khurshid Ahmad Shah alias Khurshed Ahmad Shah

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. S.K. Sharma, Advocate for
Mr. Dharamvir Sharma, Advocate for petitioner.

Mr. Karan Garg, AAG Haryana.

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.174 dated 08.06.2023, registered under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sector 53, Gurugram, District Gurugram.

2. Per First Information Report (FIR), on 08.06.2023, upon secret information, police apprehended a woman standing near Virender Singh Stadium. She disclosed her name as Nargis. Upon checking, a plastic polythene containing brown colour narcotic substance i.e., smack was found in her purse. When weighed, it was found to be 1.51 grams.

2.1. As per her disclosure statement, police team along with Nargis reached her house where they met her husband, namely, Antarul. Nargis and Antarul further produced 11.96 grams 'Smack' in the presence of Gazetted Officer. Antaru suffered disclosure statement and led the police team at the house of petitioner. On interrogation, disclosure statement of petitioner was also recorded and he also got 66.56 grams of narcotics substance i.e., Smack, recovered from his house. Petitioner was arrested on 08.06.2023 and is in custody since then. On disclosure of accused persons on 11.06.2023, co-accused, Kitab Gharami and Aastaba Sekh were also arrested.

3. Learned counsel for petitioner would contend that petitioner was not named in the FIR, but has been involved in the case on the basis of custodial disclosure statement of co-accused, Antarul. Allegedly, Smack weighing around 66.56 grams was recovered from

CRM-M-45108-2023 (O&M)

him, which falls under non-commercial quantity. Custodial statement is not admissible in evidence. Alleged recovery has been falsely shown from him.

3.1. Counsel informs that Petitioner is 75% disabled as petitioner is paralyzed from his right arm and leg. Copy of disability certificate dated 22.11.2002 is contained at Annexure P-3.

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. Petitioner is not involved in any other case.

3.2. Learned counsel for petitioner submits that co-accused of the petitioner, namely Aastaba and Kitab Gharami have already been granted concession of bail by learned Court below vide order dated 20.06.2023 (Annexure P-4), whereas, petitioner still continues to languish in jail.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. If released on bail, there is every likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He though 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 query, learned State counsel, on instructions from ASI Joginder submits that challan is likely to be presented soon. Investigation *qua* petitioner is complete and petitioner is thus 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 03 months, being behind bars since 08.06.2023.

8. 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

CRM-M-45108-2023 (O&M)

regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

9. 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.

10. Petitioner is stated to be a 39-year old person who is suffering from 75% disability. Having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

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.

13. 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 *Ilaqa* Magistrate/Duty Magistrate, 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. 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.

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

(ARUN MONGA)
JUDGE

September 15, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No