

215

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48233-2022 (O&M)

Date of decision: 18.08.2023

Gurdeep Singh @ Bittu

....Petitioner

versus

State of Punjab

...Respondent

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

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

Status report along with Annexure R-1/T and Annexure R-1 and custody certificate have been tendered in course of hearing, which are taken on record.

2. 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 03.08.2022, registered under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Jagraon, District Ludhiana.

3. Per prosecution case, on 03.08.2022, 1 kg charas and 25 strips of Tramadol Hydrochloride tablets 100 mgs, Clavidol-100 SR (each strip containing 10 tablets i.e. total 250 tablets) were recovered from the petitioner on the basis of secret information. Per FSL report, tablet of Clovidol 100 SR contained salt of Chlorpheniramine Maleate. Petitioner is in custody since 03.08.2022.

4. Learned counsel for the petitioner further submits that petitioner has been falsely implicated in this case. He further contends that in the present case, provisions of Section 42 and 50 of the NDPS Act were not complied with. He further urges that no independent witness was joined by the police party.

4.1. He also submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. He further submits that no other case is pending against the petitioner.

4.2. Learned counsel for petitioner also relies on full Bench judgment rendered by Himachal Pradesh High Court in case titled '*Ratto vs. State of Himachal Pradesh*'¹ as well as a judgment of a Coordinate Bench of this Court in case titled '*Gurdeep Singh and others vs. State*

*of Punjab*² to canvass that in order to attract the rigors of Section 37 of NDPS Act, if quantity of charas must exceed beyond 1 kg. It is to be treated as commercial only if it is more than 1 kg, whereas in the present case it is 1 kg as per conceded case of prosecution. Therefore, Section 37 of NDPS Act is not applicable. As regards 250 tablets which were alleged to be tramadol, the same as per FSL report do not fall in any psychotropic substance category since salt therein was found to be that of Chlorpheniramine Maleate.

5. On the other hand, learned State counsel, on instructions from ASI Anwar Masih, 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. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. He however, admits that no other case is pending against him.

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

7. On a Court query, learned State counsel submits that challan was presented on 07.10.2022 and charges are yet to be framed. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Commencement/conclusion of the trial is likely to take quite sometime. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last 01 year and 11 month in preventive custody, he being in custody since 03.08.2022.

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 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. Be that as it may, 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 maynot be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

10. Petitioner is stated to be 45-year old, a family person and only bread winner of his family. Having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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.

12. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, 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 hereinabove 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

18.08.2023
vandana

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