

220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46765-2023 (O&M)

Date of decision: 05.10.2023

Gurwinder Singh @ Raja

....Petitioner

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:-** Mr. Milap Singh Bhatti, Advocate  
For the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

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**ARUN MONGA, J. (ORAL)**

**CRM-39173-2023**

Allowed as prayed for, subject to all just exceptions.

**MAIN CASE**

Custody certificate of the petitioner dated 04.10.2023 has been tendered in court by learned State counsel, and it is taken on record.

2. Following the denial of bail by the learned trial court, the petitioner is now before this Court seeking his release as an undertrial in a case with FIR No.160 dated 07.06.2023, registered under Sections 21(b), 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at the Special Task Force, Police Station in Amritsar, Punjab.

3. The FIR was registered against the petitioner and his co-accused Bikramjit Singh on 07.06.2023, based on secret information received by Inspector Balwinder Singh. The petitioner was apprehended by Inspector Balwinder Singh, with the assistance of other police officials and in the presence of DSP Varinder Kumar. They recovered one polythene envelope containing 100 grams of Heroin, which was tied around his waist with the help of a white 'Parna' (cloth). The petitioner was arrested on the spot. During interrogation, the petitioner made a disclosure statement that he took 100 grams of Heroin from Bikramjit Singh @ Bikka and he had to pay the cost of said Heroin to him. A phone

Singh. Then, Bikramjit Singh informed on the phone that he was standing near Sabzi Mandi, Khandwala Park, on his Activa. The police party reached the spot and apprehended co-accused Bikramjit Singh. In the presence of DSP Varinder Kumar, a search of the Honda Activa was conducted, and 160 grams of Heroin wrapped in a polythene envelope was recovered from the boot space of the Activa. In total, 260 grams of Heroin were recovered from the conscious possession of the petitioner and his co-accused Bikramjit Singh. The petitioner has been in custody since his arrest on 07.06.2023.

4. Learned counsel for the petitioner contends that prima facie, no case is made out against the petitioner. Nothing has been recovered from the conscious possession of the petitioner. There is non-compliance with Section 50 of the NDPS Act, and no independent witness was joined by the police party. The petitioner is not a previous convict.

4.1 He further submits that the quantity of contraband recovered from the petitioner is 100 grams, which falls under the category of non-commercial quantity. The strict provisions of Section 37 of the NDPS Act would not be attracted in this case.

4.2 He further submits that the petitioner is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses. The petitioner is entirely innocent and has been falsely implicated in the case.

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, however, admits that no other case is pending against the petitioner. He submits that, according to the FSL Report, the alleged recovered quantity of 260 grams of Heroin would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case.

5.1 In rebuttal, learned counsel for the petitioner submits that although both recoveries, i.e., 100 grams and 160 grams of Heroin, cannot be clubbed, even for the sake of argument, if the prosecution's version is taken at face value, the alleged contraband

recovered was marginally higher than the non-commercial quantity. He further argues that, according to the prosecution's version, the alleged recovery includes the weight of polythene bags, and if these are excluded, and an error in weight is taken into account, the recovered contraband would fall under the category of 'non-commercial.'

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

7. In response to a query from the Court, under instructions from ASI Jang Singh, learned State counsel informs that the challan was filed on August 05, 2023. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the fourteen prosecution witnesses, none have been examined so far. The trial's progress has been slow, and it 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 June 7, 2023, for almost 04 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report regarding the contraband, which 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 offense 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 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 a 56-year-old family man and the only breadwinner of his family, which includes his wife and two sons, who are living in penury in his absence. Being a family man with a clean record, it is unlikely that he is a flight risk 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 by keeping the petitioner in further preventive custody.

12. Accordingly, the petitioner is ordered to be released on bail, 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.

13. 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.

14. 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.

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

(ARUN MONGA)  
JUDGE

05.10.2023  
vandana

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