

CRM-M-47667-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-47667-2023

Date of decision: 18.10.2023

Jatinder Singh alias Kalu

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rishu Mahajan, Advocate for the petitioner.

Mr. Hakam Singh, AAG, Punjab.

ARUN MONGA, J. (Oral)

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 19.08.2022, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the Beas, Police Station, in Amritsar.

2. According to the First Information Report (FIR), SI Balwinder Singh, along with other police officials, was on routine patrolling duty. When he reached the bridge near Rohi, a person was observed walking from the direction of village Beas. Upon noticing the police party, he attempted to turn back. He was signaled to stop and was subsequently apprehended by the police. He identified himself as Lovepreet Singh Lakha. Upon inspection, 262 grams of heroin, wrapped in transparent polythene, were discovered in the right pocket of his pants. An FIR was registered, and he was arrested on the spot. During interrogation, he made a statement revealing that he had purchased the heroin from the current petitioner. Based on this disclosure, the petitioner was arrested on April 16, 2023.

3. The learned counsel representing the petitioner argues that the alleged contraband recovered exceeded the non-commercial quantity only slightly.

He further contends that, according to the prosecution's account, the alleged recovery includes the weight of the polythene bags, and when these are excluded, and an error in weight is taken into account, the recovered contraband would fall under the category of 'non-commercial.'

3.1. Furthermore, the petitioner has been named as an accused based on the custodial disclosure statement of a co-accused, which is not inherently admissible as evidence. He asserts that the alleged recovery was not made from the petitioner's conscious possession but was potentially planted on them. According to the allegations outlined in the FIR, it is argued that no case is established against the petitioner, and the prosecution's narrative seems to be an attempt to falsely implicate the petitioner. The learned counsel also maintains that the entire prosecution case relies on the testimony of official witnesses, casting doubt on the credibility of the prosecution's account.

3.2. The petitioner's counsel asserts that there is no substantial evidence against the petitioner, and they are not connected to the alleged offense. The reported recovery of contraband is questionable.

3.3. Additionally, it is submitted that the petitioner has been in custody since April 16, 2023, and the charge sheet has already been presented. The petitioner is not required for further custodial interrogation, and the trial is expected to be a lengthy process. Therefore, detaining the petitioner serves no useful purpose.

4. 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 according to the FSL Report, the alleged recovered quantity of 262 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. Per custody certificate, petitioner is involved in four more cases, although he is on bail in three cases.

4.1 In rebuttal, learned counsel for the petitioner submits that petitioner is on bail in all the four cases.

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

6. In response to a query from the Court, on instructions from SI Savinder Singh, learned State counsel informs that the challan was filed and charges were framed on July 24, 2023. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the eight 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 April 16, 2023, for more than six months.

7. 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.

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

9. The petitioner is stated to be unmarried person with added responsibility of looking after his old aged widow mother. As a responsible family man with fixed abode, the petitioner is unlikely to pose a flight risk or evade trial proceedings.
10. 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.
11. 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.
12. 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.
13. 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.
14. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 18, 2023
Ajay

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