

CRM-M-57829-2022 (O&M)

269 (1st case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-57829-2022 (O&M)

Date of decision: September 19, 2023

Rajan Singh

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Dhruv Dayal, Additional AG 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.39 dated 06.03.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Division No.4, Patiala, District Patiala.

2. Per First Information Report (FIR), on 06.03.2022, SI Gurdeep Singh along with police officials were on duty Near Gurudwara Jhal Sahib, Patiala in connection with checking suspected elements. In the meantime, SI Gurdeep Singh received a secret information against Ajay Kumar alias Kangaroo, Shammi, Mohamad Asraan alias Aslam, Shubham, Rajivir alias Raja, Rajan Singh alias Rajan (petitioner), Anmol Vadera and Nawab Shah that they were selling drugs in the Patiala and nearby area by forming a big network/ cartel.

2.1. Investigation was entrusted to ASI Jaspal Singh. He along with other colleagues spotted three youngsters carrying black colored heavy polythene bags. Upon seeing police party, all the accused tried to escape from the spot. However, they were apprehended along with polythene bags. On asking, one of them disclosed his name as Mohamad Asraan alias Aslam. Upon his checking, brown colored contraband was recovered from one of the polythene bag carried by him. It was found to be 325 grams of *heroin*. On checking the other polythene bag held by Mohammad Asran alias Aslam in his hand, 700 grams of *smack* was recovered.

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2.2. Likewise, other youngster disclosed his name as Ajay Kumar alias Kangaroo. On checking, 900 grams of *smack* was recovered from him.

2.3. Similarly, third youngster disclosed his name as Rajan Singh alias Rajan (petitioner) and 900 grams of *smack* was recovered from him. All the accused were arrested on the spot and are in custody since then.

3. Learned counsel for the petitioner submits that alleged recovery is a planted one. He further contends that mandatory provisions of Section 50 of NDPS Act were not complied with. 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. Learned counsel has fairly concedes that petitioner is involved in one more case but in this case he is entitled to bail.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. 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. On a Court, learned State counsel, on instructions from ASI Sunil Kumar submits that after filing of challan, charges were framed way back on 22.10.2022. Trial has since commenced, investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation. Out of total 24 witnesses, 14 witnesses have been examined so far.

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 around 01 year and 06 months, being behind bars since 06.03.2022.

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,

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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. 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 may not be guilty of the alleged offence. He is not likely to commit any offence while on bail.

10. Petitioner is stated to be a 25-year old young person. Being family man and having fixed abode, 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.

12. Accordingly, petitioner is ordered to be released on bail 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. 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 19, 2023

vandana/ mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No