

CRM-M-49673-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

208

CRM-M-49673-2023

Date of decision: 06.10.2023

Gursewak Singh @ Dabu

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. Mohit Thakur, 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.104 dated 09.06.2021, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at Goindwal Sahib Police Station in Tarn Taran.

2. According to the prosecution, a police party led by SI Gurnek Singh was on patrolling duty in village Bharowal when co-accused Sandeep Singh was observed walking along a footpath alongside the drain. Upon seeing the police party, he appeared nervous and turned back. Out of fear, he discarded a plastic bag from his right pocket. On suspicion, he was apprehended by the police, and from the polythene bag, 263 grams of Heroin were recovered. An FIR was registered, and he was taken into custody. During the investigation, he disclosed that he had obtained the Heroin from the petitioner. Based on this disclosure, the petitioner was arrested on 20.10.2021 and has been in custody since.

3. Learned counsel for the petitioner contends that the petitioner was neither named in the FIR nor apprehended at the spot. He submits that the petitioner has been implicated based on the custodial disclosure statement of a co-

CRM-M-49673-2023

accused, which is not admissible evidence. The petitioner has no connection with the alleged offense, and the alleged recovery of contraband is questionable.

3.1. Learned counsel for the petitioner further argues that the alleged contraband recovered from the co-accused of the petitioner, i.e., 263 grams of Heroin, was slightly above the non-commercial quantity. He further asserts that according to the prosecution's version, the alleged recovery includes the weight of the polythene bag, and if this is excluded, considering a potential error in weight, the recovered contraband would fall under the category of 'non-commercial'.

3.2. He further submits that the petitioner has been charged as an accused with the aid of Section 29 of the NDPS Act, which must be proven during the trial. Furthermore, nothing more needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence and/or influencing prosecution witnesses.

3.3. He further argues that the petitioner is not needed for custodial interrogation, yet he has been in custody since 20.10.2021. The challan has already been presented before the competent Court, and the conclusion of the trial will take a long time. Thus, keeping him in detention serves no useful purpose.

3.4. Learned counsel for the petitioner cites the Supreme Court's judgment in the case titled 'Hasanujjaman and others Vs. The State of West Bengal,' arguing that apart from the merit of the case, the petitioner is entitled to bail purely on the grounds of the duration of custody.

4. On the other hand, the learned State counsel opposes the bail petition, expressing concerns about the petitioner potentially fleeing from trial proceedings if granted bail. He submits that the petitioner has committed a serious offense. He further argues that the recovery of contraband falls within the ambit of commercial quantity, and the provisions of Section 37 of the NDPS Act would be applicable in this case.

CRM-M-49673-2023

5. I have heard the arguments of learned counsels for both parties and have reviewed the case file.

6. In response to a query from the Court, under instructions from ASI Charanjit Singh, learned State counsel states that charges were framed on 15.12.2021, after the filing of the challan. Consequently, the investigation regarding the petitioner is complete, and he is not required for custodial interrogation. At this stage, the allegations against the petitioner are subject to trial. Out of the fourteen prosecution witnesses, only seven have been examined so far. The trial's progress has been slow, and it is expected to take a considerable amount of time. The purpose of bail is to allow an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since October 20, 2021, for nearly two years.

7. The petitioner's continued preventive custody is based on an unfounded suspicion that if released, he may tamper with evidence or influence witnesses. There is no documentary evidence, and it relies more on the nature of the FSL report regarding the contraband, which has already been filed in the Court below, to which the accused has no access. Concerning witnesses, they are all official, and therefore, it is unlikely that they will be influenced, even if the prosecution has such apprehensions.

8. Regardless, the offense allegedly committed by the petitioner is of a non-violent nature, and his release on bail does not pose a threat to society in terms of violent crimes. The allegations against the petitioner will be a matter for trial. At this stage, there appears to be a reasonable ground to believe that the petitioner may not be guilty of the alleged offense. He is also unlikely to commit any offense while on bail.

9. The petitioner is described as a 27-year-old unmarried person with added responsibilities for his elderly parents and three unmarried sisters, all of

CRM-M-49673-2023

whom are living in poverty in his absence. His continued incarceration may jeopardize his career prospects and render him jobless permanently. As a family man with a fixed abode and no prior record, it is unlikely that he poses a flight risk or would flee from trial proceedings.

10. Considering the overall situation and without commenting on the merits of the case, the instant petition is allowed. I am of the opinion that keeping the petitioner in further preventive custody serves no useful purpose.

11. Consequently, the petitioner is ordered to be released on bail upon furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court, where his case is being tried, and in case they are unavailable, before the learned Duty Judge, as the case may be.

12. If the petitioner is found to be involved in or becomes involved in any offense while on bail, the prosecution is at liberty to seek the cancellation of his bail in the present case.

13. It is clarified that any observations and/or submissions noted hereinabove shall not affect the merits of the case, as they pertain solely to the bail hearing. The learned trial Court shall proceed without being influenced by this order.

14. Any pending applications shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 06, 2023
Ajay

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