

CRM-M-50758-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50758-2023 (O&M)

Date of decision: October 12, 2023

Tinku

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Raman Chawla, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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 bearing FIR No.179 dated 09.03.2023, registered under Sections 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Barwala Police Station in District Hisar.

2. Per the First Information Report (FIR), a secret informant reported that the accused, Parveen Kumar, was involved in the sale of contraband, specifically Ganja. Accordingly, a barricade was set up near Bharat Dharamkanta, Barwala Bypass, Hisar, and a person named Parveen Kumar was observed coming from the direction of Hansi on a swift car bearing registration No.HR-26CY-0542. He was signaled to stop. Upon seeing the police party, he attempted to flee, but was apprehended by them. Upon inspection of diggy of said car, 24 kg of Ganja from one plastic bag colored yellow and from second plastic bag colored white, another 24 kg of Ganja (total 48 kilograms of Ganja) were found, leading to his immediate arrest.

2.1. In the course of the investigation, Parveen Kumar made a disclosure statement implicating the petitioner as the person to whom he had sold the remaining Ganja. Consequently, the petitioner was arrested on August 02, 2023, and named as an accused.

3. First and foremost, the learned counsel for the petitioner argues that the co-accused, Dharambir and Parveen Kumar, had already been granted bail by this Court.

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This was in accordance with the orders dated September 25, 2023, in CRM-M-47355-2023 and on October 03, 2023, in CRR-2221-2023, respectively.

3.1. The learned counsel contends that the principal accused, Parveen Kumar, from whom the alleged recovery was made (albeit controversial), has already been granted bail by this Court under the order dated October 03, 2023, as mentioned above. The counsel argues that the role attributed to the petitioner is of a much lesser degree than Parveen Kumar, yet the petitioner remains in custody. The counsel asserts that the joint recovery claimed from the petitioner is false and fabricated by the police.

3.2. The learned counsel argues that the petitioner has been implicated solely based on the disclosure statement of the co-accused, Parveen Kumar, which is not admissible as evidence.

3.3. Additionally, the counsel emphasizes that nothing incriminating was found within the petitioner's immediate possession, suggesting that the petitioner has been wrongfully arrested in this case.

3.4. Finally, the counsel asserts that there is no need for further custodial interrogation as there is nothing to be recovered from the petitioner, and there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition, arguing that the petitioner has committed a serious offense. If the petitioner is granted bail, there are chances of him fleeing from trial proceedings. He submits that the recovery of contraband falls within the ambit of a commercial quantity, and the rigors of Section 37 of the NDPS Act would be attracted in this case. On a Court query, learned State counsel does not controvert that alleged recovery was effected from the co-accused, namely, Parveen Kumar. He further submits that petitioner is involved in 08 more cases.

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

6. In response to a query from the Court, under instructions from ASI Mohinder Singh, learned State counsel submits that challan has already been filed.

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Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. 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 August 02, 2023, for more than 02 months.

8. The investigation regarding the petitioner is over, but he is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report concerning the contraband, which has already been filed in the Court below and is inaccessible to the accused. 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. Be that as it may, 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, 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. Co-accused of the petitioner have already been granted bail by this Court, as aforesaid.

11. The petitioner is stated to be a 29-year-old. Having fixed abode, it is unlikely that he is a flight risk or will flee from the trial proceedings.

12. 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.

13. Accordingly, the petitioner is ordered to be released on bail, if not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the

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Ld. 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.

14. 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.

15. 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.

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

(ARUN MONGA)
JUDGE

October 12, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No