

CRM-M-51030-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 13.10.2023

Gurpreet @ Mota

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Raman Chawla, Advocate for the 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 with FIR No.179 dated 09.03.2023, registered under Sections 20(B)(ii)(c), 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Barwala, Police Station in Hisar.

2. According to the prosecution's account, secret information was received that accused Parveen Kumar was involved in the sale of contraband, specifically Ganja. Consequently, a barricade was set up near Bharat Dharamkanta, Barwala Bypass, Hisar, and accused 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. An FIR was registered. During the investigation, accused Parveen Kumar made a disclosure statement, and co-accused Tinku was arrested.

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2.1. The petitioner was implicated as an accused based on the disclosure statement of co-accused Tinku, who claimed to have sold the Ganja to the petitioner. Consequently, the petitioner was arrested on August 03, 2023, and has remained in custody since.

3. Firstly, the petitioner's counsel argues that the principal accused, Parveen Kumar, who was in possession of the contraband, has been granted bail by this Court in an order dated 03.10.2023 (Annexure P-4) issued in CRR-2221-2023, while the petitioner, whose case seems more favorable, is still incarcerated.

3.1. Furthermore, the petitioner's counsel asserts that the petitioner was neither named in the FIR nor apprehended at the scene. They further submit that the petitioner has been accused based on the custodial disclosure statement of co-accused, which is not inherently admissible as evidence. The petitioner has no connection to the alleged offense. Apart from the confessional statement, there is no substantial evidence to support the prosecution's case. Consequently, the petitioner has been wrongfully implicated in this case. The petitioner is not involved in any other case.

3.2. It is further argued that the recovery of 48 kilograms of contraband, Ganja, which constitutes a commercial quantity, was made from the possession of co-accused Parveen. Therefore, the provisions of Section 37 of the NDPS Act should not be applicable in this case, as they are relevant only when the contraband is recovered from the conscious possession of the petitioner. Moreover, nothing was recovered from the petitioner. Additionally, it is emphasized that the petitioner does not require further custodial interrogation, and the trial is expected to be a lengthy process. Therefore, it is argued that detaining the petitioner would not serve any 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 the quantity of contraband recovered falls under commercial quantity as per provisions of the NDPS Act and rigors of Section 37 of NDPS Act would be applicable in this case. He, however, admits that petitioner is not involved in any other case.

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

6. In response to a query from the Court, learned State counsel, on instructions from ASI Shakti Singh, submits that challan is yet to be presented. Investigation *qua* petitioner has been completed. 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 03, 2023, for almost 2½ 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. In any case, the allegations against the petitioner are subject to trial. At this stage, 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 36 years old married person, having a family comprising of wife and three minor children with additional responsibility of two unmarried younger brothers and a sister. As a responsible family man with fixed abode, the petitioner is unlikely to pose a flight risk and/or will flee from trial proceedings.
10. Principal accused Parveen Kumar has already been granted the concession of bail by this Court. I see no reason as to why petitioner should not be met with similar treatment.
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, in case not required in any other case, on his furnishing bail bonds and surety bonds satisfaction of learned *Ilaqa* Magistrate/Duty Magistrate, 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

October 13, 2023
Ajay

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