

203

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-5378 OF 2023

DATE OF DECISION: 08.02.2023

Parminder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. R. S. Waraich (Rana), Advocate,
For the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

ARUN MONGA, J. (ORAL)

This is third foray of petitioner before this court, seeking bail in criminal case bearing FIR No.0016 dated 22.01.2020, registered under Sections 21 and 29 of NDPS Act IPC (Section 473 IPC added later on) at Police Station Special Task Force, STF Wing, Phase-IV, SAS Nagar, Punjab. First bail petition bearing CRM-M-24955 of 2020 was though dismissed as withdrawn on 02.09.2020, but the second bearing CRM-M-42805-2021 was dismissed on merits vide an order dated 31.05.2022.

2. Per FIR, on 22.01.2020, a police party headed by Inspector Harbans Singh was on routine search for drug peddlers in the area falling under their police station. They erected *nakabandi* (barricading) on a link road. At about 2:15 p.m., a secret informer divulged that Jagdev Singh @ Jaggi and his brother Parminder Singh @ Meena (petitioner), Mandeep Singh @ Mika son of Pindu, Sonu Ghalaut and Harpreet Singh, in connivance with each other are illegally selling heroin. He further informed that all of them were going to Ludhiana from Doraha in a white coloured lancer car bearing No.PB-10-DA-4041. Based on said information, Inspector Harbans Singh sent *ruqa* to police station for

formal registration of FIR. Formal FIR was registered. Further investigation was handed over to SI Gurcharan Singh. Contraband-Heroin weighing 02 kg 20 grams was allegedly recovered from petitioner and his four co-accused. All the accused were arrested. Petitioner has been in custody ever since.

3. Learned counsel for petitioner *inter alia* contends that petitioner has been falsely implicated. Alleged recovery was not made from his conscious possession. It was recovered from beneath the driver seat. The car from which alleged recovery has been effected, was not being driven by him but by co-accused Jagdev Singh. Petitioner was not aware of contents of car and was just sitting/travelling in the car. He further submits that even the recovery memo does not bear signatures of petitioner.

3.1. Challan has already been presented and charge has been framed. But the trial is proceeding at snail pace.

3.2. Learned counsel further contends that there are total 22 prosecution witnesses and till date only one witness has been examined. Petitioner is in custody since day one of the FIR. Conclusion of trial will take long time. No useful purpose would be served by keeping petitioner in further preventive custody.

3.3. He strenuously argues that rigors of section 37 of the Act are amiss herein, as the trial is likely to result in acquittal of the petitioner. However, due to delay/slow pace of trial, petitioner continues to be under incarceration.

4. Per contra, learned State counsel opposes the bail petition. The recovery is commercial in nature. He submits that petitioner is a habitual offender. He is involved in another case bearing FIR No. 103

dated 04.07.2015 registered under Section 22 of NDPS Act at Police Station Doraha, District Ludhiana.

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

6. Petitioner is in custody in this case since 22.01.2020. Investigation is complete. He is on bail in the other FIR wherein non-commercial quantity is involved. There are total 22 witnesses out of which only 01 has been examined. There has been virtually no progress in trial after the dismissal of second petition for grant of bail on 31.05.2022 except examination of only one prosecution witness. Trial is still likely to take long time, whereas petitioner has already been languishing in jail for the past more than three years in preventive custody.

7. Petitioner states that his mother is suffering from serious intestinal ailment and requires regular medical treatment. He submits that there is no one to look after his aged senior citizen parents and are finding it very difficult to pursue their daily pursuits in the absence of petitioner.

8. Learned counsel for the petitioner also points out that the case in hand has been investigated by an ad-hoc rank Sub Inspector Gurcharan Singh, whereas he is effectively of the rank of head constable. Thus, there has been serious violation of notification dated 03.09.1987 issued by the Government of Punjab, which envisages that only officers of the rank of ASI and above can exercise powers and perform duties specified under section 42 and 67 of the NDPS act.

9. Considering the overall scenario and without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody.

10. 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.

11. 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.

FEBRUARY 08, 2023
Shalini

(ARUN MONGA)
JUDGE

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