

**HIGH COURT OF PUNJAB AND HARYANA****Bench: HON'BLE MR. JUSTICE ARUN MONGA****Date of Decision: October 12, 2023**

CRM-M-47863-2023

**Ajay Pal****....Petitioner****V/s****State of Punjab****....Respondent**

Section: Sections 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), Section 37 of the NDPS Act

Acts: Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Subject of the Judgment: Bail Application in a case under the NDPS Act

Headnotes :

Bail Application - Petitioner seeking release as an undertrial in a case under the NDPS Act - Original FIR filed against unknown individuals - Petitioner's counsel contends no substantial link between petitioner and the alleged offense, emphasizing innocence and fabricated FIR - Lack of evidence against the petitioner - Trial anticipated to be lengthy - No useful purpose served in detaining petitioner. [Para 2-3.1]

Opposition by State - Concerns about petitioner fleeing trial proceedings if granted bail - Alleged recovery falls within the category of commercial quantity - Petitioner a habitual offender - Charges framed, investigation complete, and trial in progress - No requirement for custodial interrogation. [Para 4-6]

Court's Observation - Continued preventive custody based on unsubstantiated suspicion of tampering with evidence or influencing witnesses - Documentary evidence already filed and not accessible to the accused - No probability of tampering with evidence - Witnesses are official and unlikely to be influenced - Non-violent nature of the offense - No threat to society at large - Reasonable ground to believe petitioner may not be guilty - Responsible family man unlikely to pose flight risk or evade trial proceedings. [Para 7-9]

Decision - Bail granted to the petitioner - Ordered to be released on furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court - Prosecution allowed to seek bail cancellation if petitioner gets involved in any offense while on bail - Observations for bail hearing purposes only and should not influence the merits of the case. [Para 10-13]

Referred Cases: None mentioned

Representing Advocates:

- Ms. Harnaaz Kaur Hundal, Advocate with Ms. Taranjit Kaur Hundal, Advocate for the petitioner.
- Mr. Mohit Thakur, AAG Punjab for the State of Punjab

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ARUN MONGA, J. (Oral)

Short reply by way of affidavit dated 12.10.2023 of the Deputy Superintendent of Police, Garhshankar, submitted by the learned State counsel in the Court, is taken on record.

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.110 dated 18.07.2021, registered under Sections 15(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ( for short 'NDPS Act') at the Garhshankar, in Hoshiarpur.

2. According to the prosecution's account, a police party led by Inspector Iqbal Singh was on patrol duty. When they approached the Bhamian turning near the Truck Union on Nangal Road, Garhshankar, they noticed a white Xylo car parked on the side of the road. Inside the car, two individuals were seen unloading some heavy bags or sacks. Upon seeing the police party, they quickly fled the scene in the same vehicle, leaving behind 5 sacks. Upon inspecting these 5 sacks, the police discovered one quintal of poppy husk, which was then taken into police possession. A First Information Report (FIR) was filed against the unidentified individuals. During the subsequent investigation, 11 more bags of 1 of 4 Neutral Citation No:=2023:PHHC:132888 2023:PHHC:132888 CRM-M-47863-2023 poppy husk, each weighing 20 kilograms, were found, and the petitioner was named as a defendant in the current case.
3. To begin with, the petitioner's counsel argues that the original FIR was filed against unknown individuals, and the petitioner has no connection to the alleged offense. The counsel further maintains that the petitioner is innocent and has not committed any offense. It is contended that the FIR's account is fabricated, and there is no substantial link between the petitioner and the alleged offense. The petitioner is entirely uninvolved in the alleged offense, and there are doubts about the alleged recovery of contraband.
  - 3.1 Furthermore, the petitioner's counsel asserts that there is no substantial evidence against the petitioner, and nothing incriminating

has been found in their possession. The 5 sacks left unattended on the road do not belong to 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 no useful purpose would be served in detaining the petitioner.

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 according to the FSL report, the alleged recovery i.e. 3 quintals 20 kilograms of poppy husk recovered from 16 bags would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case. Moreover, petitioner is a habitual offender and is involved in another case under the NDPS Act.
5. I have heard the rival arguments and reviewed the case file.
6. In response to a query from the Court, on instructions from ASI Buta Ram, learned State counsel informs that the challan was filed and charges were 2 of 4 Neutral Citation No:=2023:PHHC:132888 2023:PHHC:132888 CRM-M-47863-2023 framed on 14.02.2022. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the fifteen prosecution witnesses, nine have been examined so far. The trial 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.
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. At this stage, the allegations against the petitioner are subject to trial. In any case, 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 the sole provider for his family with the additional duty to take care of his ailing parents. As a responsible family

man with fixed abode, the petitioner is unlikely to pose a flight risk or evade trial proceedings.

10. 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.

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11. 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 to the satisfaction of the learned 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.
12. 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.
13. 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.
14. Pending applications, if any, shall also stand disposed of.

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