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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-264-2023 (O&M)

Date of decision: 31.07.2023

Angrej Singh

...Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Madan Sandhu, Advocate,
For the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)**CRM-30628-2023**

Application is allowed, as prayed for.

Testimony of PW-3 ASI, Charanjit Singh dated 05.05.2022 (Annexure P-5)

is taken on record, subject to all just exceptions.

Main case

Petitioner seeks bail in case bearing FIR No.168 dated 17.09.2021, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, City Moga, District Moga.

2. Per FIR, on 17.09.2021, petitioner along with co-accused Hoshiar Singh were apprehended on a suspicion by SI Gurtej Singh. On search, white colored polythene envelope containing 280 grams Heroin, was recovered from petitioner's possession, without having any permit or license. Whereas, co-accused Hoshiar Singh was found in possession of 30 grams Heroin. Both were arrested immediately from the spot.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He submits that the alleged recovery effected from the plastic bag has been planted on the petitioner. He further submits that petitioner is in custody since 17.09.2021. Challan has already been presented before the competent Court. Charges have been framed. There are 16 prosecution witnesses only four of the witnesses have been examined. Petitioner is not required for custodial interrogation. He

submits that co-accused of the petitioner, namely Manjeet Kaur and Hoshiar Singh have already been accorded concession of anticipatory bail and regular bail by learned trial Court vide order dated 28.10.2021 and 02.11.2021 respectively. Though allegations against petitioner are same as those against his co-accused on bail, and yet he continues to be in jail, he contends. He argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial.

3.1 He further submits that head constable rank official in police is not competent to either register the FIR as complainant or the Investigating Officer. He points out even in the statement as PW-3 before the learned trial Court, he himself conceded that he is having local rank of ASI otherwise he is a Head Constable and as per him he was under the impression that he is competent to carry out the search and investigate the matter. He refers to the testimony of said ASI/Head constable, which is on record as Annexure P/5. He submits that there has been a clear cut violation of the provisions of NDPS Act and such non-compliance in all likelihood will result in acquittal of the petitioner on conclusion of the trial.

3.2 He further submits that petitioner has a fixed abode and as such there is no chance of his either absconding or fleeing or tampering with the prosecution evidence, in any manner, in case he is allowed bail at this stage.

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence and is a habitual offender. She further submits that quantity of contraband recovered falls under the commercial quantity, so provisions of Section 37 of NDPS Act would be attracted. She further points out that petitioner is involved in another case registered under Section 42/52-A of Jail Act, Police Station City Faridkot and is not on bail in the said case. Apart from this, one FIR under Section 21 of NDPS Act has also been registered against the petitioner in which his production warrant has been issued. In case petitioner is granted concession of bail, there are chances of his absconding.

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

6. Challan is stated to have been presented, charges have been framed. Investigation is complete, petitioner is thus not required for custodial interrogation. Trial has commenced and the case is fixed for prosecution evidence only four prosecution witnesses out of 16 witnesses have been examined so far. Commencement/conclusion of the trial is likely to take quite sometime. Allegations against petitioner are a matter of trial at this stage.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for more than 01 year and 10 months in preventive custody, he being behind bars since 17.09.2021. He is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the Court below to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

8. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence and he is unlikely to commit any offence while on bail.

9. Petitioner is stated to be 28-year old family man, who has added responsibility of her three minor children and wife, who are living in penury in his absence. Being a family man, it is unlikely that he is flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime.

10. Co-accused-Hoshiar Singh has been granted concession of bail by learned trial court vide order dated 02.11.2021. Alleged role attributed to the petitioner appears to be at par with that of his co-accused. In the premise, I see no ground as to why petitioner should not be meted out 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 to keep the petitioner in further preventive custody.
12. 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.
13. 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.
14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned Trial Court shall proceed without being influenced with this order.
15. Pending application(s), if any, shall also stand disposed of.

31.07.2023
vandana

(ARUN MONGA)
JUDGE

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