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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4560-2023 (O&M)
Date of decision: August 07, 2023

Malkiat Singh @ Bhola

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Harpreet Kaur Dhillon, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.43 dated 12.10.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Fatehgarh Panjtoor, District Moga.

2. Per prosecution version, on 12.10.2022, petitioner was apprehended by ASI Surinder Kumar on the basis of secret information and he was found in possession of polythene envelope containing 500 Buprenorphine and Nalozone Sublingual tablets, without any permit or licence. Petitioner is in custody since then.

3. Learned counsel appearing on behalf of petitioner submits that petitioner has been falsely implicated in this case. On the date of alleged incident, petitioner was riding pillion with his son and was returning from Vardhan Hospital, which is a Psychiatric and De-addiction Centre. She further canvasses that copy of prescription (Annexure P-3) on record shows that on 12.10.2022, his son had been prescribed the same drug. He was not arrested but petitioner was framed, contends the learned counsel.

3.1. Learned counsel further contends that Chand Singh son-in-law of the petitioner filed a written complaint to the Vigilance Bureau, Moga stating that money was being extorted from the family of petitioner by the police and also supplied the audio recordings to the Bureau. Said complaint is pending.

3.2. Learned counsel further points out that petitioner can barely see beyond 2 feet. Apart from suffering visual impairment, she submits that petitioner is a chronic patient of

Hepatitis C.

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3.3. Learned counsel submits that there are two more cases against the petitioner, but he is on bail in those cases. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

4. On the other hand, learned State counsel, on instructions from ASI Dilbagh Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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

6. On a Court query, learned State counsel informs that challan was filed and charges were framed on 23.12.2022. Investigation is thus complete *qua* the petitioner and he is not required for custodial interrogation. Out of total 12 witnesses, only 1 has been examined so far.

6.1. On an earlier occasion, a co-ordinate Bench of this Court (then seized of the matter) passed following order on 24.03.2023:

“It is submitted that the petitioner has been falsely implicated. On the date of the alleged incident, the petitioner was riding pillion with his son and was returning from Vardhan Hospital, which is a Psychiatric and De-addiction Centre. Copy of the prescription Annexure P-3 on the record shows that on 12.10.2022 the son had been prescribed the same drug. He was not arrested but the petitioner was framed. The son-in-law Chand Singh made a complaint to the Vigilance Bureau alongwith audio recording that the arrest was for extorting money. Thus, the petitioner deserves the concession of regular bail as he has been in custody for over five months.

Learned State counsel is directed to file a status report based on the alleged complaint made by Chand Singh to the Vigilance Bureau Punjab.

Adjourned to 04.05.2023.”

6.2. Thereafter, matter has been taken up on 04.05.2023 but no report per directions above was filed. On resumed hearing today, position is same. No report has been filed, while petitioner is languishing in the jail.

6.3. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 9 months in preventive custody, being behind bars since 12.10.2022.

7. Petitioner 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

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documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the trial Court 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. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioner are matter of trial. 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.

9. Petitioner is stated to be 50-year old labourer who can barely see beyond 2 feet and is also a patient of Hepatitis-C and is undergoing a treatment.

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 to keep the petitioner in further preventive custody.

11. Accordingly, 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 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.

12. 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.

13. 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.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 07, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No