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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 11, 2023

Harbhajan Singh @ Bhajja

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Hardik Ahluwalia, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (ORAL)

This is the third foray of the petitioner before this Court seeking his release as an undertrial in a case bearing FIR No.125 dated 02.06.2020, registered under Sections 21, 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Dinanagar, Police Station in District Gurdaspur. The first petition filed by the petitioner was dismissed vide order dated 14.02.2022 (Annexure P-2) passed in CRM-M-41821-2021. Second petition filed by the petitioner was dismissed vide order dated 19.07.2022 (Annexure P-3) passed in CRM-M-14397-2022.

2. According to the prosecution's account, on 02.06.2020, SI Mohan Lal arrived at the scene in a private vehicle for further proceedings. Already present on the Bypass road near Amarjit Automobiles were ASI Rupinder Singh, along with other police officials and two suspects, alongside an Indigo car with the registration number PB-10CN-2574. Upon inquiry, the car driver identified himself as Harbhajan Singh, also known as Bhajja (the petitioner), and the person in the rear seat of the car as Jeevan, known as Labha. Suspect Jeevan was seated in the rear with a sack between his legs. Upon inspection, a polythene bag was discovered containing 19,000 loose brown-colored intoxicating capsules marked as TRAMADOL. A slip found in the polythene bag indicated it as PARVORIN-SPAS RIDLEY, manufactured in India by RIDLEY LIFE

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SCIENCE PVT. LTD., with batch number PAR-2007, manufacturing date May 2020, expiration date APR 2022, and an MRP of Rs.500 per capsule (inclusive of all taxes). An FIR was registered, and the petitioner was arrested on the spot.

3. The petitioner's counsel argues that the petitioner was granted interim regular bail per the order dated 06.08.2020 until the receipt of FSL. Later, the challan was filed on 30.10.2020 in the petitioner's absence, leading to the cancellation of his bail order and personal bonds due to his non-appearance. Subsequently, the petitioner surrendered before the Court on 02.08.2021.

3.1. Furthermore, the learned counsel argues that neither the mandatory provisions of Sections 42 and 50 of the NDPS Act were complied with, nor was any independent witness present during the alleged recovery. The alleged recovery took place from a plastic sack situated on the rear seat between the legs of the co-accused, namely Jeevan, also known as Labha. The petitioner, as the driver of the car, cannot be considered to be in conscious possession of the alleged contraband.

3.2. Additionally, the counsel emphasizes that nothing incriminating was found within the petitioner's conscious possession, implying that the petitioner has been wrongfully accused in this case.

3.3. Finally, the counsel contends that there is no need for further custodial interrogation as nothing needs to be recovered from the petitioner, and there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition, arguing that the petitioner has committed a serious offense. If the petitioner is granted bail, there are chances of him fleeing from trial proceedings. He submits that the recovery of contraband falls within the ambit of a commercial quantity, and the rigors of Section 37 of the NDPS Act would be attracted in this case. He further submits that petitioner is involved in one more case, but has been acquitted in that case.

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

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6. In response to a query from the Court, under instructions from ASI Sohan Singh, learned State counsel submits that after filing the challan, charges were framed on September 09, 2022. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation. Of the twenty prosecution witnesses, eleven have already been examined so far.

7. 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 02, 2021, for more than 02 years and 02 months (earlier being granted interim bail on 06.08.2020 till filing of FSL report and thereafter surrendered on 02.08.2021).

8. The investigation regarding the petitioner is over, but he is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report concerning the contraband, which has already been filed in the Court below and is inaccessible to the accused. 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.

9. Be that as it may, the offense 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, 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.

10. The petitioner is stated to be a 48-year-old. Having fixed abode, it is unlikely that he is a flight risk or will flee from the trial proceedings.

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.

15. Pending applications, if any, shall also stand disposed of.

Yes/No