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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 17, 2023

Punjab Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ankur Jain, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

ARUN MONGA, J. (ORAL)

This is third foray of the petitioner seeking his release as an undertrial in a case bearing FIR No.233 dated 02.11.2020, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Sadar Patti, Police Station in Tarn Taran. Earlier bail petitions were dismissed as withdrawn vide orders dated 06.07.2021 passed in CRM-M-1335-2021 and dated 11.07.2022 passed in CRM-M-1514-2022.

2. Per the First Information Report (FIR), on 02.11.2020, acting on secret information, a young man was observed arriving from the direction of Bhikhiwind on a scooty with the registration number PB 02 CN 8663. Sub-Inspector Sukhraj Singh, along with other police officials, halted the aforementioned vehicle. The Deputy Superintendent of Police (DSP) inquired about the individual's whereabouts, to which he identified himself as Punjab Singh (the petitioner).

2.1. Following proper procedure, the Sub-Inspector conducted a search, during which some material concealed in polythene was found in the right pocket of the petitioner's pants. Upon inspection, this material was identified as heroin, weighing approximately 310 grams. An FIR was filed, and the petitioner was promptly apprehended, remaining in custody since that moment.

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3. Foremost learned counsel for the petitioner asserts that the alleged recovery was fabricated to incriminate the petitioner. Petitioner was detained on 01.11.2020 in front of the Shri Guru Ramdas Petrol Pump of HP located at Bhikhiwind to Harike Road in the revenue estate of Village Bur Chand. The entire incident was recorded by the CCTV camera installed at the petrol pump, with the CD of the CCTV footage included in Annexure P-2. Furthermore, it is contended that the petitioner was detained a day prior to the supposed incident, thus implicating the petitioner falsely. Accordingly, the petitioner was neither present at the alleged location nor in possession of any incriminating material.

3.1. Additionally, the counsel emphasizes that no incriminating items were found in the petitioner's immediate possession, suggesting that the petitioner has been wrongfully detained in this case.

3.2. The petitioner's counsel refers to a Supreme Court judgment in the case titled '**Hasanujjaman and others Vs. The State of West Bengal**'¹ to assert that, regardless of the merits of the case, the petitioner is entitled to bail based on the duration of custody. He also relies on a Supreme Court judgment in the case titled '**Sanjay Chandra versus CBI**'² to argue that pre-conviction imprisonment carries significant punitive implications.

3.3. Finally, the counsel affirms that further custodial interrogation is unnecessary since there is nothing more 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 her fleeing from trial proceedings. He also submits that petitioner is involved in one more case.

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

¹ SLP (CrI.) No.3221-2023 decided on 04.05.2023

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6. In response to a query from the Court, under instructions from ASI Hardial Singh, learned State counsel submits that challan has already been filed and charges were framed on 17.10.2022. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation.

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. Of fifteen witnesses, none has already been examined so far. 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 November 02, 2020, for more than 02 years and 11 months.

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, her 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 27-year-old. Having fixed abode, it is unlikely that she 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.

12. Accordingly, the petitioner is ordered to be released on bail, if not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the

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Ld. 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.

13. 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 her bail in the instant case.

14. 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.

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

(ARUN MONGA)
JUDGE

October 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No