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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9123-2022 (O&M)

Date of decision: 31.08.2023

Lovejeet Singh @ Love

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Bhavesh Aggarwal, Advocate for
Mr. Vikas Gupta, Advocate for petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Status report dated 31.08.2023 by way of affidavit of Tarsem Masih, PPS, Deputy Superintendent of Police, Sub Division Tarn Taran, District Tarn Taran has been tendered in course of hearing, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.51dated 17.06.2019, registered under Sections 22of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Jhabal, District Tarn Taran.

3. Per FIR, on 17.06.2019, SI Desa Masih along with other police officials were on routine patrolling. A young clean shaven person was spotted carrying a polythene bag, who upon seeing the police party threw away his bag. Same was seen by SI Desa Masih and the police party apprehended him (the petitioner) on the basis of suspicion. Upon checking, 275 grams of intoxicating powder was recovered. Per FSL report, intoxicant powder contained salt 'Tramadol Hydrochloride'. He was arrested from the spot on 17.06.2019.

4. Learned counsel for the petitioner contends that no recovery has been effected from the possession of the petitioner. Recovery was effected from the polythene bag and in any case has been planted on the petitioner. He has no link with the alleged recovery. He further submits that mandatory provisions of NDPS Act were

not complied with. He further urges that no independent witness was joined by the police party. Petitioner has thus been falsely implicated in the present case.

4.1 Further argues that petitioner was admitted to interim bail vide order dated 20.08.2019 awaiting the FSL report. After the FSL report was received, petitioner surrendered on 13.10.2021 and since then he is in custody. He never misused the concession of interim bail. He was regularly appearing before learned trial Court.

4.2 Learned counsel also submits that 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.

5. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. He submits that petitioner was convicted in one case under NDPS Act and he is required in another case under NDPS Act on production warrants.

6. In rebuttal, learned counsel for the petitioner submits that he has already undergone his sentence in which he has been convicted, while he is on bail in the other case.

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

8. Learned State counsel, on instructions from ASI Kulwant Singh, submits that challan was filed on 09.10.2020 and charges were framed. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation.

Allegations against the petitioner are matter of trial. All the prosecution witnesses have been examined. Now the case is fixed for defense evidence on 06.09.2023. Bail

allows an accused to maintain his freedom until his guilt or innocence is determined.

Whereas, petitioner has already been in jail for more than 01 year and 08 months, per custody certificate.

9. 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 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 have already been examined.

10. 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 unlikely to commit any offence while on bail.

11. Petitioner is stated to be a family person, and in his absence, his family members are living in sheer penury being dependent on him. Being family person and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

12. 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.

13. Accordingly, petitioner is ordered to be released on bail, if 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.

14. 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.
15. 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.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.08.2023
vandana

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