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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 18, 2023

Malkeet Singh @ Malkiat Singh @ Meeta

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Parminder Singh Sekhon, Advocate,
Mr. Gurinder Singh, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case bearing FIR No.136 dated 02.08.2021, registered under Sections 21, 22, 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Majitha Police Station in District Amritsar.

2. As per the First Information Report (FIR), on August 01, 2021, SI Som Nath, along with other police officials, was on patrol duty searching for individuals with ill intentions from Majitha to Nangal Panua, Nag Kala, etc. They received secret information that a car, an I20 with license plate No.PB01-DU-6032, was approaching from Amritsar. The car was driven by Karambir Singh, and Malkit Singh (the petitioner) was also in the vehicle. It was believed that conducting a checkpoint might lead to the recovery of illegal substances. Subsequently, the police set up a barricade and stopped a car with license plate No.PB-02-DU-6032. The driver identified himself as Karambir Singh, the person in the passenger seat as Malkeet Singh (the petitioner), and the individual in the back seat as Charanjit Singh. Upon inspecting the car, the police found a plastic envelope on the dashboard containing 915 tablets of an intoxicating substance (heroin). A personal search of accused Charanjit Singh revealed 10 grams of heroin (including the weight of the plastic) that he had thrown on the ground from the right

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pocket of his capri. Additionally, drug money amounting to Rs.68,300 (Rs.500 x 110, Rs.200 x 25, and Rs.100 x 83) was recovered from his left pocket. An FIR was registered, and the accused were arrested on the spot, with the petitioner remaining in custody since then.

3. Learned counsel for the petitioner argues that nothing was recovered from the personal search of the petitioner. The alleged discovery of contraband occurred on the car's dashboard, and the purported 10 grams of heroin, along with the drug money, was found on the co-accused, Charanjit Singh. It is also contended that there is a lack of compliance with the mandatory provisions of Sections 42 and 50 of the NDPS Act.

3.1. Furthermore, the counsel emphasizes that nothing incriminating was found in the petitioner's immediate possession, suggesting that the petitioner has been wrongfully detained in this case.

3.2. The learned counsel representing the petitioner cites the Supreme Court's judgment in the case titled **Hasanujjaman and others Vs. The State of West Bengal**¹ to argue that, irrespective of the merits of the case, the petitioner is entitled to bail simply based on the duration of custody. They further rely on the Supreme Court's judgment in the case titled **Sanjay Chandra versus CBI**² to contend that pre-conviction imprisonment carries significant punitive consequences.

3.3. Finally, the counsel asserts that there is no need for further custodial interrogation, as 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 his 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. Learned State counsel submits that petitioner is involved in 06 other cases.

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

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4.1. Per contra, learned counsel for the petitioner submits that petitioner has been granted bail in 05 cases by learned Courts below vide orders dated 07.02.2022, 21.02.2022, 09.05.2022, 28.08.2017 and 13.03.2019. Further, in one case, petitioner was convicted, but his sentence has been suspended vide order dated 07.09.2016 passed by a co-ordinate Bench of this Court.

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

6. In response to a query from the Court, under instructions from ASI Gurnam Singh, learned State counsel submits that challan has already been filed and charges were framed on 06.08.2022. 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 twelve 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 August 02, 2021, for more than 02 years and 02 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, 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.

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10. The petitioner is stated to be a 41-year-old married person. His wife is stated to have been suffering from schizophrenia and manic depression who requires his care there being none other than him in the family to look after his wife. Being family man and 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.
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 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 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 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 18, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No