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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10424-2023 (O&M)

Date of decision: 05.10.2023

Parshant Dharmani @ Panku

....Petitioner

Versus

State of Punjab

...Respondent

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

Mr. Mohit Thakur, 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 with FIR No.310 dated 11.12.2022, registered under Sections 21(b) and 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) at the Special Task Force, Police Station in Phase-4, District SAS Nagar, Mohali.

2. According to the prosecution version, the FIR was registered based on a Ruqa sent by ASI Kamaljit Singh, stating that on 11.12.2022, he was present at a barricade near KFC Shop, Sunny Enclave, Kharar, District SAS Nagar, for the purpose of patrolling and searching for criminal elements. Around 9:00 p.m., he received information that Parshant Dharmani @ Panku (the present petitioner), aged about 32 years, who has tattoos on both arms, was involved in the sale of Heroin. The information suggested that the said person, after purchasing a significant quantity of Heroin from Ferozepur, was heading to New Garden Colony, Kharar, to supply it to his customers. A barricade was set up based on this secret information, and the petitioner was apprehended at the spot. A search of the car he was driving revealed 200 grams of Heroin hidden in the dashboard. An FIR was registered, and the petitioner was taken into custody on 11.12.2022, where he has remained ever since.

3. Learned counsel for the petitioner argues that the provisions of Section 50 of the NDPS Act have not been complied with. No independent witness was

present at the time of the alleged recovery, and no recovery was made from the conscious possession of the petitioner. He asserts that the petitioner has been falsely implicated in this case.

3.1 He further contends that even if the petitioner were to be convicted, given the sentence already served, he may still be released on that ground alone since the alleged quantity recovered from him is non-commercial.

3.2. He further submits that nothing more needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood 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 is a risk of him fleeing from trial proceedings. However, he admits that the recovery of contraband falls within the ambit of a non-commercial quantity. He also points out that the petitioner has a history of multiple cases against him, indicating that he is a habitual offender.

5. In rebuttal, learned counsel for the petitioner submits that out of the 17 cases, he has been acquitted in 10 cases, proceedings have been dropped in one case, and he is out on bail in three other NDPS Act cases.

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

7. In response to a query from the Court, under instructions from ASI Hakam Singh, learned State counsel informs that after the filing of the challan, charges were framed on July 19, 2023. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. At this stage, the allegations against the petitioner are subject to trial. Of the fourteen prosecution witnesses, only one has been examined so far. 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 December 11, 2022, for about 10 months.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might 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.

10. The petitioner is stated to be a 32-year-old family person. He is the sole breadwinner of his family, which is living in sheer penury in his absence. Being a family person, 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 learned 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

05.10.2023

vandana

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