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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-12671-2023 (O&M)****Date of decision: 03.10.2023**

Sanjeev Kumar @ Billa

....Petitioner

Versus

State of Punjab

...Respondent

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

Mr. Mohit Thakur, AAG, Punjab.

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**ARUN MONGA, J. (ORAL)****CRM-40981-2023**

Application herein is for placing on record the additional facts and documents as Annexure P-5 to P-8.

Documents are taken on record, subject to all just exceptions.

Application stands disposed of accordingly.

**Main case**

This is second foray of the petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.329dated 16.11.2019, registered under Section18of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Model Town, District Hoshiarpur as earlier interim bail was granted by a coordinate Bench of this Court vide order dated 07.02.2020 passed in CRM-M-4716-2020, awaiting the FSL report.

2. Per prosecution version, on 16.11.2019, SI Gobinder Kumar along with ASI Mahesh Chander and other police officials were on patrolling duty on a Government vehicle and were going from Railway Station towards Kartar Nagar. Then from opposite side, one Indica Car was seen coming from Bansi Nagar side. On seeing the police party, driver of the car tried to run away but he was encircled by the police party and was apprehended. On enquiry, he disclosed his name as

Sanjeev Kumar @ Billa (present petitioner). After completing formalities, 3 kilograms opium was recovered from the front seat of the car. FIR was registered against the petitioner and he was arrested.

3. Learned counsel for the petitioner contends the provisions of Section 50 of the NDPS Act have not been complied with. Further urges that recovery was planted upon petitioner and the story of FIR is concocted one. Petitioner was illegally arrested by police and FIR was registered, whereas recovery was in fact effected in some other case i.e., FIR No.328 dated 16.11.2019, under Section 18 of NDPS Act, registered at Police Station, Model Town, District Hoshiarpur wherein recovery of 500 grams opium was shown and the huge part of recovery i.e., 3 Kilograms opium was planted upon petitioner. No recovery was actually effected from the conscious possession of the petitioner.

3.1. He further 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.

3.2. Learned counsel for the petitioner submits that petitioner was granted benefit of interim bail vide order dated 07.02.2020 till the receipt of FSL report and upon receipt of FSL report, petitioner himself surrendered on 22.08.2022 and since then he is in custody. Petitioner never misused the bail privilege. No other case is pending against him, contends the learned counsel.

3.3. Learned counsel for petitioner further refers to photographs and medical record contained at Annexure P-5 (colly.) to contend that petitioner is not medically fit and is suffering from blood disease. He further points out that his daughter is also suffering from a tumor in her left eye and needs immediate presence of her father. Petitioner is only bread earner of the family.

3.4. Learned counsel for petitioner further submits that co-accused Umeshwar Kumar has already been granted the concession of bail by learned trial Court vide order dated 16.08.2022 (Annexure P-6).

4. 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 trial proceedings. He further submits that recovery of contraband falls within the ambit of commercial quantity and rigors of Section 37 of the NDPS Act would be attracted in the present case. However, he admits that there is no other case pending against the petitioner.

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

6. On a Court query, under instructions from ASI Gurbhajan Singh, learned State counsel submits that challan was filed on 01.12.2020. Charges have also been framed on 16.08.2022. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Out of 15 prosecution witnesses, only two have been examined so far. Conclusion of the trial is likely to take quite sometime as it is proceeding at a snail pace. Whereas petitioner has been languishing in jail for more than 01 year and 04 months in preventive custody, per custody certificate, having remained in custody from 18.11.2019 to 10.02.2020 and since 16.08.2022 till date.

7. 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 Court below 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 therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

8. Be that as it may, 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.

9. Petitioner is stated to be 50-year old family person. He is sole breadwinner of his family who is living in sheer penury in his absence. Being a family person with clean antecedents, it is unlikely that he is flight risk or will flee from the trial proceedings.

10. Co-accused Umeshwar Kumar has already been granted the concession of bail by learned trial Court.

11. Considering the overall scenario and, the medical exigency, stated as above, 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.

12. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.

13. 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.

14. 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.

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

(ARUN MONGA)  
JUDGE

03.10.2023  
vandana

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