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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13121-2023 (O&M)

Date of decision: 24.08.2023

Balwinder Singh @ Budhu

....Petitioner

versus

State of Punjab

...Respondent

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

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.208 dated 17.10.2022, registered under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Dakha, District Ludhiana.

2. FIR was registered on the basis of secret information that Balwinder Singh @ Budhu is habitual of selling poppy husk and on 17.10.2022 he was waiting for his customers at his house and if raid is conducted, he can be apprehended with heavy quantity of poppy husk. Believing the information to be true, *ruqa* was sent, raid was conducted and as per recovery memo 54 kg poppy husk was recovered from the petitioner. He was arrested from the spot and has been in custody since 17.10.2022.

3 Learned counsel for the petitioner submits that in the present case mandatory provisions of Sections 50 and 51 of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Alleged recovery has been planted on him and thus petitioner has been falsely implicated in this case. Petitioner is not involved in any other case.

3.1 He 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.

4. On the other hand, learned State counsel opposes the bail petition. She 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. She however, admits that no other case is pending against him.

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

6. On a Court query, learned State counsel, on instructions from ASI Paramjit Singh, submits that challan was filed on 12.04.2023 and charges were framed on 05.05.2023. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Out of 14 witnesses, two have been examined so far. Conclusion of trial will take some time as the same is proceeding at a snail's pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 10 months in preventive custody, he being in custody since 17.10.2022.

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 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 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 51-year old only bread earner of his family comprising of his wife and children, who are living in sheer penury in his absence. He has added responsibility to look after his ailing parents. He has already lost his livelihood

due to prolonged incarceration. He is not a threat to society in any manner and not flight risk in any manner, given that he has a family to look after and has clean antecedents and a fixed abode.

10. 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.

11. 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.

12. 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.

13. 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.

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

(ARUN MONGA)
JUDGE

24.08.2023
vandana

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