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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13188-2023 (O&M)

Date of decision: 24.08.2023

Sarthak Shirshu

....Petitioner

versus

Union of India, Narcotics Control Bureau, Chandigarh

...Respondent

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

Ms. Sharmila Sharma, Senior Standing Counsel, Union of India for NCB

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 NCB crime No.39/2021 dated 06.06.2021 registered under Section 8, 20 (b) (ii), (c), 25, 27-A, 28, 29, 30, 60 & 62 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, NCB, Chandigarh.

2. Per prosecution version, on 06.06.2021, on a secret information that on one Deepak Sharma and Amar Singh Chauhan were en-route for delivery of substantial quantity of Charas to one Guru Ji at Kosi Kalan in the State of Uttar Pradesh in their black coloured Mahindra XUV-300, the said vehicle was intercepted at near Umri Chowk, Kurukshetra at about 9:00/9:30 p.m. During checking, the vehicle was stopped and on enquiry driver disclosed his name as Deepak Sharma and other person sitting in the car disclosed his name as Amar Singh Chauhan. A third person was also found accompanying them, who disclosed his name as Sarthak Shirshu (present petitioner). Driver of the vehicle disclosed that they have concealed 4 kg charas under the rear boot of the vehicle. Thus, 4.180 KGs Charas was recovered from the vehicle. All the occupants of vehicle were arrested. Petitioner has been in custody since 06.06.2021.

3 Learned counsel for petitioner submits that petitioner is neither the owner of the vehicle nor was he driving the same. He further submits that no independent witness was joined by the police party. Alleged recovery was made on 06.06.2021 but case was registered on 07.06.2021 and petitioner was produced before the *Illaga*

Magistrate at Kurukshetra on 08.06.2021. These are glaring delays. He further submits that on personal search of the petitioner, nothing was recovered from his possession. There is no evidence that petitioner is connected with the alleged offence in any manner. 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. He further submits that petitioner is 24-year old young boy, who is doing the business of travel agency under the name and style of Shirshu Himalaya Adventure at Kullu-Manali. He has nothing to do with other co-accused, who were nabbed along with him and had simply taken a lift in the car since he intended to go to Delhi in course of his business.

3.1. Learned counsel for petitioner further argues that though Section 27-A of NDPS Act has been invoked, but there is neither any role attributed to the petitioner, nor recovery has been made to make out the ingredients of said section.

3.2. 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.

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 Sharique Omar, Intelligence Officer, submits that challan was presented and charges were framed on 26.08.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of 11 witnesses, three have been examined so far and next date of hearing for recording remaining prosecution evidence is 15.09.2023. Conclusion of trial will take

some time as it is proceeding at a snail 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 02 years 02 months, being in custody since 06.06.2021.

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 a young boy, aged 24 years and is on the cross-roads of his career and his future is getting severely jeopardized due to prolonged incarceration. Having clean antecedents and got a family and fixed abode and his own family business of travel house, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

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