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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14358-2023 (O&M)

Date of decision: 04.09.2023

Sadhu Singh and another

....Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. P.S.Ahluwalia, Advocate for petitioners.

Mr.Shubham Kaushik, AAG, Punjab.

ARUN MONGA, J. (ORAL)**CRM-37054-2023**

Application is allowed, as prayed for.

Annexure P-8 is taken on record, subject to all just exceptions.

Main case

After being declined bail by the trial Court, petitioners before this Court seek their release as undertrials in a case bearing FIR No.138 dated 29.12.2022, registered under Sections 21 (C), 22 (C) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Maur, District Bathinda.

2. FIR was registered on the basis of a *ruqa* sent by complainant SI Avtar Singh stating that on 29.12.2022 at around 11.50 a.m. while he was on patrolling duty near canal bridge Maur Khurd, he apprehended two youth namely, Chattar Singh alias Tanny and Raju Singh, sitting in a Maruti car and, recovered 4,800 intoxicant tablets of Alprazole-0.5 (Alprazolam IP 0.5 mg) from the car.

2.1. During investigation, it transpired that co-accused Chattar Singh alias Tanny and Raju Singh had bought the tablets from a drug store/chemist in Delhi. Petitioners, who are licensed chemists, were arrested. On tracing out the batch numbers, it was unearthed that 7,800 strips of Alprazolam were indeed legitimately purchased by the petitioner (chemists). However, they could not account for a batch of 5,200 strips of Alprazolam i.e., 52,000 tablets. Petitioners are/were in custody since 18.01.2023, but

petitioner No.1- Sadhu Singh was admitted to interim bail for a period of four months vide order dated 18.07.2023.

3. Learned counsel for the petitioners submits that petitioners are the chemists and are license holders of the business in prescription medicines falling under NDPS. They are doing their business in Delhi. Petitioners have been implicated on the basis of statement made by some representative of M/s Lifeline Pharmaceutical, the alleged manufacturer of the contraband recovered from the two co-accused, as above. It has been alleged by Life Line Pharmaceuticals that petitioners are the buyers of the drugs/medicines being manufactured by the said firm. Petitioners' licensed firm operates under the name of M/s Asis Pharmaceutical & Surgical Shop, Subhash Nagar, New Delhi.

3.1. He would emphatically point out that, to sell the drugs, petitioners are having a valid license issued by the Delhi Government under the Drugs Act.

3.2. He further contends that petitioners have been implicated on the sole allegation that petitioner's inventory did not tally with the medicines purchased from the manufacturer. He argues that inventory has to be checked by the relevant competent authority, which would be the Delhi Drug Inspectors. Neither the Delhi Police nor the Drug Inspector, Delhi has initiated any kind of proceedings against the petitioners *qua* such a violation, if any.

3.3. Alleged occurrence is of 29.12.2022 and petitioners have been arrayed as accused on 18.01.2023 after a delay of 20 days. Delay has been used by the investigation agency to concoct a false narrative against the petitioners.

3.4 Learned counsel for the petitioners also points out that it transpires, that at this stage, reason for continued custody of petitioner No.2 is his ostensible failure to provide the purchase bills *qua* the drugs/medicines in question, for which he is otherwise authorized to deal with, being registered/licensed chemists. He further urges that even if petitioners were/are unable to produce those corresponding bills, and it is assumed at this stage to be unaccounted, the same would not, in any case, be a ground of their continued incarceration in view of the commensurate GST having been paid by the petitioners.

Payment of GST is borne out from GST returns of the petitioner, Annexure P-4. GST returns of their firm/s depict that the whole inventory of the petitioner's firm, is well accounted.

3.5 Learned counsel for the petitioners contends that no recovery has been effected from the petitioners. Petitioners have no link with the alleged recovery from the two original accused, as above. He further submits that, in any case, qua them also, mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioners are not involved in any other case. Petitioners have thus been falsely implicated in the present case.

3.6 Learned counsel also submits that there is no likelihood of petitioners tampering with evidence and/ or influencing prosecution witnesses.

3.7 Learned counsel for the petitioners also refers to medical status report of undertrial Bhupinder Singh, (petitioner no.2) which has been tendered in course of hearing. He submits that perusal of the same reveals that condition of petitioner No.2 is deteriorating day-by-day.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioners have committed a serious offence. In case, petitioner No.2 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. He 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. Learned State counsel, on instructions from ASI Baljinder Singh, submits that challan was duly presented and charges have been framed. Petitioners are thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are matter of trial. Out of 20 prosecution witnesses, none has been examined so far. Commencement/conclusion of trial will take some time as it is proceeding at snail pace. Whereas, petitioner No.2 has

already been in jail for the last more than 07 months and 15 days being in custody since 18.01.2023.

7. Petitioner No.2 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. Offence allegedly committed by petitioner No.2 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. 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 No.2 is stated to be 55-year old family person, suffering from Type-2 diabetes, on daily insulin dosage, and currently needs immediate medical assistance as per his latest medical report. He is only bread winner of his family members, who are living in penury in his absence. Being a family man with clean antecedents and fixed abode, it is unlikely that he is flight risk or will flee from the 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 No.2 in further preventive custody.

11. Accordingly, petitioner No.2 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. As regards petitioner No.1-Sadhu Singh, following order was passed by this

Court on 18.07.2023:

“Petitioners Sadhu Singh, a senior citizen aged 75 years and his co-accused partner in business as a chemist/druggist, aged 55 years, seek bail in case bearing FIR No.138 dated 29.12.2022, registered under Sections 21 (C) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station, Maur, District Bathinda.

Learned State counsel seeks more time to file status report qua role attributed to the petitioners per allegations contained in FIR in question.

At her request, adjourned to 14.08.2023.

In the meanwhile, given the peculiar medical condition of petitioner No.1 stated to be 75-year old senior citizen, as borne out from Annexure P-5, he is ordered to be admitted to interim bail for a period of four months from the date of release from custody, subject to his furnishing bail/surety bonds to the satisfaction of learned Chief Judicial Magistrate/trial Court concerned. The date of release and surrender to be notified by learned Court below.”

13. Petitioner No.1-Sadhu Singh is thus already on interim bail in compliance of order dated 18.07.2023. In the premise, order dated 18.07.2023 granting interim bail to the petitioner is made absolute, till the pendency of trial before learned trial Court.

14. In case, petitioners are found involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.

15. 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.

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

(ARUN MONGA)
JUDGE

04.09.2023

vandana

Whether speaking/reasoned: Yes/No

Whether reportable:	Yes/No
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