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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21898-2022 (O&amp;M)

Date of decision: September 14, 2023

Dilbagh Singh @ Bagga

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Shubham Kaushik, AAG Punjab.

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**ARUN MONGA, J. (ORAL)**

This is the second foray of the petitioner before this Court seeking his release as an undertrial in a case bearing FIR No.0138 dated 16.10.2019, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and (Sections 411, 473, 201 of the Indian Penal Code, 1860 (for short 'IPC') added later on), at Police Station, Sultanwind, District Amritsar. First petition bearing CRM-M-23891-2020 was dismissed as withdrawn vide order dated 25.11.2021.

2. Per First Information Report (FIR), on 16.10.2019, on secret information, ASI Jasbir Singh along with ASI Balwinder Singh and other police officials erected a *naka* (barricade) and were on duty there. A young man riding on Activa Scooter was noticed coming but on seeing police party, he got perplexed. He tried to flee but skidded and was apprehended. He disclosed his name as Dilbagh Singh @ Bagga (petitioner). One polythene bag containing Heroin (250 grams) was recovered which was tied to his waist in a cloth. Petitioner was arrested on the spot. He is in custody since then.

3. Learned counsel for the petitioner submits that FIR was registered on the basis of alleged secret information without associating any independent witness to connect petitioner with the alleged offence. He further contends that mandatory provisions of Sections 42, 50 and 57 of NDPS Act have not been complied with. The alleged recovery from petitioner is a planted one. Sample was received by the FSL on 21.10.2019, i.e., after delay of 05 days of registration of FIR in question. The alleged contraband is marginally above the non-commercial quantity. He would further urge that per prosecution version, alleged recovery effected from petitioner in the

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weight is taken into account, the alleged recovered contraband would come under the head of 'non-commercial'.

3.1. Learned counsel further contends that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

3.2. Learned counsel also submits that petitioner has though been convicted in another case under NDPS Act but his appeal against the order of conviction is pending before the Supreme Court.

3.3. He informs that petitioner is a patient of high blood sugar and is regularly visiting doctors even inside the jail. Wife of the petitioner is also suffering from heart disease and there is no one to take care of her. He refers to clinical laboratory slip and medical reports contained at Annexures P-2 and P-3.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is every likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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

6. On a Court, learned State counsel, on instructions from SI Jagvir Singh submits that after filing of challan, charges were framed way back on 29.02.2020. Trial has since commenced, investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation. Out of total 15 witnesses, 09 witnesses have been examined so far.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the past around 03 years and 11 months, being behind bars since 16.10.2019.

8. 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

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they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

9. 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 not likely to commit any offence while on bail.

10. Petitioner is stated to be a 47-year old person suffering from diabetes mellitus and his wife is suffering from heart disease. There is no one else to look after her. Being family man and having fixed abode, it is unlikely that he poses any flight risk and/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 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 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.

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. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing 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

September 14, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No