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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.10.2023

Jeevan alias Labha

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Manoj R. Sharma, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Custody certificate of the petitioner dated 08.10.2023 has been tendered in court by learned State counsel, and it is taken on record.

2. This is second foray of petitioner before this Court seeking his release as an undertrial in a case with FIR No.125 dated 02.06.2020, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the Dinanagar, Police Station in Gurdaspur. Earlier petition filed by petitioner was dismissed on merits vide order dated 22.09.2022 passed in CRM-M-21705-2022.

3. The FIR was registered against the petitioner and his co-accused, Harbhajan Singh, on June 2, 2020, based on information received by SI Mohan Lal. On the day of the incident, at about 7:05 p.m., he, along with other police officials, was present opposite Amarjit Automobile. A car was seen approaching from the Gurdaspur side, and they were signaled to stop. The person driving the car disclosed his name as Harbhajan Singh @ Bhajja, while the person sitting in the rear seat disclosed his name as Jeevan @ Labha (petitioner herein). Upon inspection, 19,000 intoxicating capsules named Parvorin-Spas Ridley were recovered from the car's floor, leading to the registration of the FIR. However, the

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petitioner was granted interim bail by the Court on July 30, 2020. After the investigation was completed, a challan was presented. However, the petitioner did not appear despite being served notice. Consequently, on March 17, 2021, his personal bond was canceled and forfeited to the State. Subsequently, he was summoned through non-bailable warrants. When his presence could not be secured through these warrants, he was summoned through a proclamation issued on September 15, 2021. Ultimately, the petitioner surrendered in Court on November 16, 2021, and has been in custody since.

4. The learned counsel for the petitioner contends that the alleged recovery was not made from the conscious possession of the petitioner but was planted on him. From the allegations outlined in the FIR, it is argued that no case is made against the petitioner, and the prosecution's narrative is an attempt to falsely implicate him. The learned counsel further submits that the entire prosecution case relies on the testimony of official witnesses, raising doubts about the credibility of the prosecution story.

4.1. Furthermore, it is submitted that the petitioner has been in custody since November 16, 2021, and the challan has already been presented. The conclusion of the trial is expected to take a considerable amount of time. Hence, it is argued that keeping the petitioner behind bars serves no useful purpose, especially when no other case is pending against him.

4.2. The petitioner's counsel also argues that the petitioner does not need further custodial interrogation. There is no indication that the petitioner would tamper with evidence or influence prosecution witnesses. The petitioner asserts his innocence and claims to have been falsely implicated in the case.

5. On the other hand, learned State counsel strenuously opposes the petition, expressing concerns about the possibility of the petitioner fleeing from trial proceedings if granted bail. He submits that alleged recovered quantity falls

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within the category of commercial quantity and thus, rigors of Section 37 of the NDPS Act would be attracted in this case. Per custody certificate, petitioner was involved in three more cases, although he has already undergone the sentence in one case and in the other two cases, production warrants have been issued against him.

6. I have heard the rival arguments and reviewed the case file.

7. In response to a query from the Court, under instructions from ASI Tarlok Singh, learned State counsel informs that the challan was filed on October 30, 2020. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the twenty prosecution witnesses, eleven have been examined so far. The trial is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention on two occasions; firstly from June 02, 2020 to August 03, 2020 and secondly since November 16, 2021, for more than 02 years.

8. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report regarding the contraband, which has already been filed in the Court below and is not accessible to the accused. There is no probability of tampering with evidence as it has already been seized by the investigating agency. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

9. The offence allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. At this stage, the allegations against the petitioner are subject to trial. In any case, there appears to be a

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reasonable ground to believe that the petitioner may not be guilty of the alleged offense, and he is not likely to commit any offense while on bail.

10. The petitioner is stated to be 36-year old married person, having a family comprising of wife and one minor child. He is the sole provider for his family, which is currently living in dire poverty in his absence. As a responsible family man and a stable residence, the petitioner is unlikely to pose a flight risk or evade 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 by keeping the petitioner in further preventive custody.

12. Accordingly, the petitioner is ordered to be released on bail, in case not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

13. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the 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 the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 09, 2023
Ajay

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