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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16890-2023 (O&M)

Date of decision: August 01, 2023

Vipan Batra @ Kaju

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Monty Goyal, Advocate,
Mr. Gagan Batra, Advocate for
Mr. Rahul Arora, 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 undertrial in a case bearing FIR No.86 dated 17.10.2022, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 NDPS Act added later on), at Police Station, City-2 Abohar, District Fazilka.

2. Per prosecution version, on 17.10.2022, petitioner, while travelling in the area of Ganga Nagar Chowk bypass on truck bearing registration No.PB23-K-9975, was intercepted and 65 kg. of poppy-husk and 50 grams of opium were recovered from his possession. He was taken in custody from the spot.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He would further urge that per prosecution version, alleged recovery effected from petitioner in the present case includes the weight of packing and if the same is excluded and error in weight is taken into account, the alleged recovered contraband would come under the head of 'non-commercial'. He points that recovery of alleged substance is marginally higher than the commercial quantity.

3.1. Learned counsel for petitioner further contends that co-accused of the petitioner, namely Sukhwinder Singh @ Bittu was granted concession of bail vide order

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dated 23.02.2023 (Annexure P-4) by a co-ordinate Bench of this Court. He urges that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazetted officer was joined by the police at the time of alleged recovery/seizure of contraband. 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. There is no other case against the petitioner.

4. On the other hand, learned State counsel, on instructions from ASI Vishlesh Kumar, opposes the bail petition. She submits that petitioner has committed a serious offence. In case, he is let out on bail, there are chances of his fleeing.

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 informs that there is no other case pending against the petitioner. Challan in instant case has already been filed and charges were framed on 06.02.2023. Investigation is thus complete and he is not required for custodial interrogation. Trial has commenced and out of total 14 witnesses, none has been examined so far. 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 languishing in jail for the last more than 9 months in preventive custody, being behind bars 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

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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 34-year old unmarried person having old-aged father to look after and lost his mother while he was in custody and being a family man and having responsibilities and fixed abode, it is unlikely that he will flee from the trial proceedings.

10. Co-accused has also been granted bail by the co-ordinate Bench of this Court.

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, in case 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.

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. 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.

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

(ARUN MONGA)
JUDGE

August 01, 2023

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No