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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17220-2023 (O&M)

Date of decision: 31.08.2023

Ashok Kumar

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Gurpal Singh Sandhu, Advocate for petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Status report dated 30.08.2023 by way of affidavit of Fateh Singh Brar, PPS, Deputy Superintendent of Police, Sub Division Malout, District Sri Muktsar Sahib in compliance of order dated 19.04.2023 has been tendered in course of hearing, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.57 dated 27.03.2022, registered under Sections 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Lambi, District Sri Muktsar Sahib.

3. Per FIR, on 27.03.2022, ASI Malkit Singh along with other police officials on routine patrolling in a government vehicle. When they reached at Abohar Road triangle from GT Road Malout-Dabwali, one person was seen coming on foot with a backpack of black colour on his shoulder. On seeing the police party, he tried to flee but was apprehended on suspicion. On checking, 10,000 tablets of Alprazole-0.5, suspected to be contraband, were recovered from conscious possession of the petitioner after carrying out the necessary formalities. He was arrested from the spot. Per FSL report, recovered tablets contained salt Alprazolam. Petitioner is in custody since 27.03.2022.

4. Learned counsel for the petitioner contends that alleged recovery has been planted on the petitioner due to political vendetta. Actually, no recovery was

effected from the possession of the petitioner. During interrogation, petitioner disclosed that he allegedly brought/bought the recovered contraband from Delhi and he was to supply the same to Ajay Bhutna. But neither any attempt to unearth the source/chain nor any evidence otherwise has come forth so as to implicate the petitioner. Petitioner has no link with the alleged recovery. He further submits that mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioner is not involved in any other case. Petitioner has thus been falsely implicated in the present case.

4.1 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.

5. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. Learned State counsel submits that co-accused Ajay Bhutna is still at large as per para 4 of the reply. 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. He however, admits that no other case is pending against him.

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

7. Learned State counsel, on instructions from ASI Sarwant Singh, submits that challan was filed on 12.09.2021 and charges were framed thereafter. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against petitioner are matter of trial. Out of 17 prosecution witnesses, none has been examined. Commencement/conclusion of trial will take some time as the same 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 01 year and 05 months being in custody since 27.03.2022.

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 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.

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 unlikely to commit any offence while on bail.

10. Petitioner is stated to be working as salesman in Grocery (*Kiryana*) shop and is the sole bread winner of his family. He has added responsibility of looking after his widowed mother. Having clean antecedents and fixed abode with family responsibilities, it is unlikely that he poses any flight risk and/or will flee from 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, 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.

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

31.08.2023
vandana

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