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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17108-2023 (O&M)

DATE OF DECISION: 09.08.2023

Baljinder Singh @ Happy Dhaliwal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kanisth Ganeriwala, Advocate,
For the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by learned trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.06 dated 12.01.2023, registered under Sections 21 & 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Anaj Mandi, District Patiala, Punjab.

2. Per prosecution version, on 12.01.2023, ASI Baljinder Singh along with other police officials was on patrolling on private vehicle in search of suspected persons. When they reached Jyoti City road, they saw one person walking with one black coloured polythene bag. Upon seeing police party, he threw the bag in bushes on road side and tried to flee. He was apprehended. Polythene bag, which he threw, was checked and 1000 intoxicating capsules of Tramadol were recovered. From one white coloured cloth, 40 grams of Heroin was also recovered. Petitioner was arrested from the spot. *Ruqa* was sent and formal FIR was registered. Investigation was carried out. Later, per FSL report, ingredients detected in parcel turned out to be Tramadol Hydrochloride . Weight of 1000 capsules was found to be 540 grams i.e. 540 mg/capsule (540 x 1000 = 540 gms).

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the case. No independent witness was joined by the investigating agency. He further states that search and recovery proceedings were conducted by unauthorized officer, who was not competent to conduct search. Prosecution was

required to call a Gazetted Officer or Magistrate at the spot to supervise the recovery proceedings but the seizure officer was a Sub Inspector of police, who was neither a Gazetted Officer or SHO or Incharge of Police Station nor empowered under the NDPS Act. Further submits that another glaring violation of safeguards prescribed under mandatory Standing Order No.01/89 dated 15.03.1988 issued by Government of India was committed by the prosecution i.e. the SI, who seized the alleged contraband, was also made the Investigating Officer. Further, the seal was not handed over or carried out by any independent witness, making the alleged recovery doubtful, contends the learned counsel. Petitioner is not involved in any other case.

4. Learned counsel further contends that petitioner is suffering from bodily immobilization as he is paralyzed from right portion of his body. He further contends that per his instructions, petitioner is not even able to walk and his lower limbs are not working currently. He requires urgent medical intervention for getting himself treated from a hospital of his choice.

5. On a Court query with regard to medical condition of the petitioner, learned State counsel, though admits that petitioner is suffering from paralysis, but he is being given proper medical treatment in jail from time to time. Learned State counsel further urges that at present, the medical condition of petitioner is stable.

6. Learned counsel for the petitioner, on the contrary, relies on medical report (Annexure R-1) filed by learned State counsel and submits that State itself admitted that petitioner is suffering from Prolapsed Inter-Vertebral Disc Prolapse and if remained untreated, the disease may progress to permanent neurological deficit leading to Quadriplegia.

7. Learned State counsel on merits also opposes the petition and submits that petitioner has committed a serious offence. He further contends that recovery effected from petitioner falls under the category of commercial quantity and bar created by Section 37 of NDPS Act is attracted. If released on bail, he might tamper with evidence or influence/ intimate the witnesses and also flee from the trial proceedings.

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

9. On a Court query, learned State counsel submits that challan was presented on 14.07.2023. Investigation is complete *qua* petitioner, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. It is stated that there are total 17 witnesses, out of them none has been examined so far. Whereas, petitioner has already been languishing in jail for the past about 07 months in preventive custody, being behind bars since 12.01.2023.

10. 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.

11. 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 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 and he is not likely to commit any offence while on bail.

12. Petitioner is stated to be 22-year old boy having clean antecedents. He is suffering from paralysis and is unable to walk, as noticed above. It is unlikely that he poses any flight risk or will flee from trial proceedings. Per medical report, he is suffering from Prolapsed Inter-Vertebral Disc Prolapse and if remained untreated, the disease may progress to permanent neurological deficit leading to Quadriplegia.

13. 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.

14. 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.

15. 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.

16. 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.

17. Since main petition seeking regular bail has been allowed vide order of even date, application bearing CRM No.27214 of 2023 seeking interim bail on medical grounds, is disposed of as infructuous.

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

(ARUN MONGA)
JUDGE

August 09, 2023
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No