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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 19, 2023

Baldev Singh

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rishu Mahajan, Advocate for the petitioner.

Ms. Svaneel Jaswal, Additional Advocate General, Haryana.

ARUN MONGA, J. (Oral)

This is third foray of the petitioner seeking his release as an undertrial in a case with FIR No.359 dated November 26, 2019, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Section 18C of Drugs and Cosmetic Act, 1940 at the Parao, Police Station, in Ambala. His earlier two petitions were dismissed as withdrawn on June 01, 2022 and July 11, 2022 (Annexures P-5 and P-6) by a coordinate Bench of this Court.

2. According to the First Information Report (FIR), ASI Naresh Kumar, along with other police officials, was present under Swastik Chowk bridge on November 26, 2019. After some time, the petitioner, along with co-accused Balvir Singh, arrived on a scooter with Balvir Singh riding and the petitioner as the pillion rider. As the scooter did not have a number plate, they were signaled to stop. Upon searching the bag carried by them, 10,380 tablets of Lomotil, 8,700 tablets of Tramadol Clovidol-100 SR, 200 capsules of Pervovin Spas, 210 capsules of Tramadol Tramwel, 600 grams of loose capsules of Pervovin Spas, 716 grams of tablets, and 330 grams of green-colored capsules were recovered. An FIR was registered, and the petitioner was arrested on the spot.

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3. The learned counsel representing the petitioner argues that prima facie, no case is made out against the petitioner. There is non-compliance with Section 50 of the NDPS Act, and no independent witness was joined by the police party. The alleged recovery was not made from the petitioner's conscious possession but was planted on them. Based on the allegations outlined in the FIR, it is contended that the prosecution's narrative appears to be an attempt to falsely implicate the petitioner and his co-accused. He further submits that the petitioner was arrested on November 26, 2019, but was granted the concession of interim bail for seven days on account of his younger sister's marriage by the Court below, vide order dated February 22, 2021, contained at Annexure P-4, and he never misused the said bail privilege.

3.1. Furthermore, the petitioner's counsel asserts that there is no substantial evidence against the petitioner. The petitioner is not connected to the alleged offense, and the reported recovery of contraband is questionable.

3.2. He further submits that the petitioner has been in custody since November 26, 2019, and the charge sheet has already been presented. The petitioner is not required for further custodial interrogation, and the trial is expected to be a lengthy process. Therefore, keeping the petitioner behind bars serves no useful purpose. The petitioner is not involved in any other case.

3.3 Learned counsel appearing for the petitioner relies on Apex Court's judgment in case titled '*Hasanujjaman and others Vs. The State of West Bengal*'¹ to contend that *de hors* the merit merely on the ground of duration of custody, petitioner is entitled to bail. He further relies on Apex Court's judgment in case titled '*Sanjay Chandra versus CBI*'² to contend that imprisonment before conviction has a substantial punitive content.

¹ SLP (Crl.) No.3221-2023 decided on 04.05.2023

² AIR 2012 SC 830

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3.4. The petitioner's counsel further contends that the petitioner is not required for additional custodial interrogation. There is no indication that the petitioner would tamper with evidence or influence prosecution witnesses. The petitioner maintains his innocence and claims to have been falsely implicated in the case.

4. 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 according to the FSL Report, the alleged recovered quantity would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case. She, however, admits that no other case is pending against him.

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

6. In response to a query from the Court, learned State counsel informs that the challan was filed and charges were framed on January 19, 2021. The investigation regarding the petitioner is complete, and he is thus not required for custodial interrogation. Of the twenty-one prosecution witnesses, five 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 since November 26, 2019, for about four years.

7. The petitioner's continued preventive custody is based on an unsubstantiated suspicion that he might tamper with evidence or influence witnesses. The documentary evidence is more in the nature of an FSL report regarding the contraband, 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

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

8. 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 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.

9. Petitioner is stated to be 21-year old youngman and is on the cross-roads of his career. He has already lost his livelihood due to prolonged incarceration. Having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. 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.

11. Accordingly, the petitioner is ordered to be released on bail 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.

12. In case the petitioner is found involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.

13. 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.

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

(ARUN MONGA)
JUDGE

October 19, 2023
Ajay

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