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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-21428-2023 (O&M)

Date of decision: 04.10.2023

Sukhwinder Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ramnish Puri, Advocate, for petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Custody certificate dated 04.10.2023 of petitioner and status report dated 13.09.2023 by way of affidavit of Sub Inspector Satnam Singh, Station House Officer, Police Station Beas, Amritsar (Rural), on behalf of the respondent, State of Punjab have been tendered in course of hearing, which are taken on record.

2. After being denied bail by the trial court, the petitioner in this case is now seeking release as an undertrial. The case in question is FIR No.105, dated 31.05.2022, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (referred to as the 'NDPS Act'), at Police Station Beas, in District Amritsar.

3. According to the prosecution's account, the FIR was filed based on information received from Inspector Balkar Singh. He reported that on 31.05.2022, while patrolling and conducting a search for potential offenders on the Beas river bridge, he received information suggesting that one of the co-accused, Purshotam Singh, was involved in interstate opium smuggling. Purshotam Singh was allegedly smuggling large quantities of opium in his truck with license plate number PB02-CC-9760, from Jharkhand to various cities including Amritsar, Taran Taran, Batala, Gurdaspur, and others. It was further alleged that Purshotam Singh, in collaboration with his driver, Sukhwinder Singh (the present petitioner), had concealed a significant opium consignment from Jharia, Jharkhand, inside the dashboard of the truck for

distribution. At the time of this information, the truck was parked near Umranangal village, Beas, due to a technical fault. A raid was conducted at this location, resulting in the discovery of Sukhwinder Singh (the petitioner) and Purushottam Singh inside the truck. Upon inquiry, they identified themselves, and a subsequent search led to the recovery of 4 kilograms and 80 grams of opium from the truck's dashboard. Both individuals were subsequently arrested, and an FIR was registered against them.

4. Learned counsel for petitioner argues that the provisions of Section 50 of the NDPS Act were not adhered to during the arrest and search. He points out that no independent witnesses were present at the time of the alleged opium recovery. Furthermore, the counsel asserts that the truck in question did not belong to the petitioner, and the petitioner had no direct connection with it apart from being its driver. He argues that no incriminating substances were found in the petitioner's conscious possession, suggesting that he has been falsely implicated in the case. The petitioner has a clean criminal record, and there are no other pending cases against him, according to the counsel's submission.

4.1. The counsel further contends that there is nothing to recover from the petitioner, and there is no need for further custodial interrogation. He emphasizes that there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4.2. In addition, the petitioner's counsel highlights that a co-accused has already been granted interim bail on medical grounds by a previous ruling from this court, dated 13.02.2023 (Annexure P-3), under CRM-M-40734-2022.

4.3 Learned counsel for the petitioner also relies on Apex Court's judgment in case titled 'Hasanujjaman and others Vs. The State of West Bengal' and contends that de hors the merit, merely on the ground of duration of custody, petitioner is entitled to bail.

5. Per contra, the learned State counsel opposes the bail petition, asserting that the petitioner stands accused of a grave offense. Granting bail, he contends, could lead to the petitioner absconding during the trial proceedings. Furthermore, the State counsel emphasizes that the quantity of contraband recovered exceeds the threshold for a commercial quantity, invoking the stringent provisions of Section 37 of the NDPS Act. Nevertheless, he concedes that there are no other pending cases against the petitioner.

6. I have carefully considered the arguments presented by both parties and reviewed the case record.

7. Upon a query from the court, the learned State counsel, acting on instructions from ASI Shamsher Singh, reveals that the challan was filed on 30.11.2022, with charges framed on 19.12.2022. As such, the investigation concerning the petitioner is concluded, and he is no longer required for custodial interrogation. The trial's commencement and conclusion are likely to be protracted, proceeding at a sluggish pace. It is noteworthy that, out of the 13 prosecution witnesses, none have been examined thus far. It is essential to recognize that bail affords an accused individual the opportunity to maintain their freedom until their guilt or innocence is determined. In stark contrast, the petitioner has languished in jail for over one year and four months in preventive custody, as per the custody certificate, having been detained since 31.05.2022.

8. The petitioner's continued preventive custody is based on unsubstantiated suspicions that his release might result in evidence tampering or witness influence. There exists no evidence to support these concerns, particularly in light of the FSL report on the contraband, which has already been filed in the lower court and, is inaccessible to the accused. Regarding the witnesses, they are all official witnesses, making it improbable for them to be influenced, even if such apprehensions exist from the prosecution's perspective.

9. Moreover, the offense allegedly committed by the petitioner is non-violent in nature, and therefore, his release on bail does not pose a threat to society at large in terms of committing violent crimes. It is crucial to recognize that the allegations against the petitioner remain subject to trial, and at this stage, there appears to be reasonable grounds to doubt his guilt regarding the alleged offense. There is no indication that he would engage in further criminal activity while on bail.
10. The petitioner is reported to be a 51-year-old family man and the sole breadwinner of his family, who is currently enduring significant financial hardship during his absence. Given his family-oriented background, it is unlikely that he poses a flight risk or would abscond from trial proceedings.
11. Taking into account the overall circumstances and without expressing any opinion on the merits of the case, I am of the view that detaining the petitioner in further preventive custody would serve no meaningful purpose.
12. Accordingly, the petitioner is ordered to be released on bail to the satisfaction of the learned trial Court, where his case is being tried, or before the learned Duty Judge if the former is unavailable.
13. However, should the petitioner become involved in any criminal activities while on bail, the prosecution retains the right to seek the cancellation of his bail in the present case.
14. Lastly, any observations or submissions made herein are solely for the purpose of considering the instant bail petition and should not influence the merits of the case. The learned trial Court is expected to proceed uninfluenced by the same.
15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

04.10.2023
vandana

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