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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22839-2022 (O&M)

Date of decision: August 09, 2023

Gurpreet Singh @ Makhan

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amjad Khan, 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.0065 dated 07.09.2021, registered under Sections 22, 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), at Police Station, Rureke Kalan, District Barnala.

2. Per prosecution version, on 07.09.2021, SI Gurbachan Singh apprehended Gurpreet Singh @ Makhan (petitioner) on suspicion. From his possession 1290 tablets of TRAMWEL SR 100 were recovered. Petitioner was arrested on the spot and is in custody since then. During the investigation of the present case, on 09.09.2021, petitioner disclosed that he used to buy these intoxicant tablets from co-accused, namely, Krishan Kumar, a chemist. On his disclosure statement Krishan Kumar was nominated as an accused and the offence under Section 29 NDPS Act was added. At the instance of petitioner, co-accused-Krishan Kumar was also thus arrested on 11.09.2021 and from his possession 60 tablets of TRAMWEL SR 100 were recovered.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated. Alleged recovery of contraband is a planted one. Learned counsel for petitioner 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. He also urges that no written information *qua* alleged incident was sent to the senior official(s) before conducting search. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution

witnesses. There is no other case against the petitioner.

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3.1. Learned counsel also submits that co-accused, namely Krishan Kumar has already been granted concession of bail vide order dated 28.01.2022 (Annexure P-4) passed in CRM-M-42523-2021 by a co-ordinate Bench of this Court.

4. On the other hand, learned State counsel, on instructions from ASI Bali Ram, opposes the bail petition. She submits that petitioner has committed a serious offence. She further contends that per report of RTFSL, Bathinda, Tramadol Hydrochloride was found and average weight of each table was 381.52 mg/tablet. Thus, recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act are applicable. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. Learned State counsel though admits that there is no other case pending against the petitioner.

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 challan was filed and charges were framed on 29.03.2022. Investigation is thus complete and he is not required for custodial interrogation. Out of total 23 witnesses, 19 have 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 been languishing in jail for the last more than 1 year and 11 months in preventive custody, being behind bars since 07.09.2021.

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. 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

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reasonable ground that petitioner may not be guilty of the alleged offence. He is not likely to commit any offence while on bail.

9. Petitioner is stated to be a family person having clean antecedents and fixed abode. It is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

10. Co-accused of the petitioner has also been granted concession of bail by the co-ordinate Bench of this Court vide order dated 28.01.2022. In the premise, I see no reason as to why petitioner should not be meted out with similar treatment.

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 09, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No