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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22326-2023 (O&M)

Date of decision: 22.08.2023

SonuGhalot

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Kunal Choksi, Advocate for petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

This is third foray of petitioner before this court, seeking bail in a case bearing FIR No.16 dated 22.01.2020 (Annexure P-1), registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), and Section 473 of IPC, at Police Station, Special Task Force, Phase-4, Mohali, District SAS Nagar, Punjab as earlier bail petitions filed by him were dismissed as withdrawn vide orders dated 15.11.2021 and 15.11.2022 by a coordinate Benches of this Court.

2. Per FIR, on 22.01.2020, a police party headed by Inspector Harbans Singh was on routine search for drug peddlers. They erected *nakabandi* (barricade) on a link road. At about 2:15 p.m., a secret informer divulged that Jagdev Singh @ Jaggi and his brother Parminder Singh @ Meena, Mandeep Singh @ Mika son of Pindu, SonuGhalot (present petitioner) and Harpreet Singh, in connivance with each other are selling heroin. He further informed that all of them were on way to Ludhiana from Doraha in a white coloured lancer car bearing No.PB-10-DA-4041. Based on said information, Inspector Harbans Singh sent *ruqa* to Police Station for formal registration of FIR. Further investigation was handed over to SI Gurcharan Singh. On their search, contraband-Heroin weighing 02 kg 20 grams was thus recovered from petitioner and his four co-accused. All the accused were arrested on the spot. Petitioner has been in custody ever since.

3. Learned counsel for petitioner at the outset contends that co-accused of the petitioner, have already been accorded concession of bail by this Court. Petitioner's

case is at par with co-accused who are on bail and yet petitioner continues to be languishing in jail, he contends. He also argues that on the ground of parity alone, petitioner is entitled to be released on bail during pendency of trial. Role attributed to the petitioner is merely that of being an accomplice passenger sitting on the rear seat of the car. He submits that contraband was recovered from front seat of the car. Petitioner had no knowledge of the same. He submits that the car from which alleged recovery has been effected, was not being driven by him but by the co-accused Jagdev Singh.

3.1 He 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.

3.2 Learned counsel for the petitioner also points out that the case in hand has been investigated by an *ad hoc* rank Sub Inspector Gurcharan Singh, whereas he is effectively of the rank of head constable. Thus, there has been serious violation of notification dated 03.09.1987 issued by the Government of Punjab, which envisages that only officers of the rank of SI and above can exercise powers and perform duties specified under Section 42 and 67 of the NDPS Act.

4. On the other hand, learned State counsel, on instructions from ASI Paramjeet Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. 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. She submits that one more case was pending against him in which he has been convicted and he has already undergone his sentence.

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 submits that challan was filed on 18.07.2020 and charges were framed on 31.03.2021. Trial has since commenced, petitioner is thus not required for custodial interrogation. Out of total 22 witnesses, seven have been examined. Trial is likely to take long time. 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 03 years, 6 months and 29 days in preventive custody, he being in custody since 22.01.2020.

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. 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. He is unlikely to commit any offence while on bail.

9. Petitioner is stated to be 33-year old family person having wife and one minor child, who are totally dependent on him and in his absence, they are living in sheer penury. Being a married person with family responsibilities and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

10. Co-accused have been granted concession of bail by this Court vide orders dated 08.02.2023, 29.03.2023 and 20.04.2023 (Annexures P- 5 to P-7).

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

22.08.2023
vandana

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