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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: July 28, 2023

Vinod Kumar alias Ganja

....Petitioner

versus

State of Haryana

....Respondent

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

Mr. Karan Garg, AAG Haryana.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in a case bearing FIR No.364 dated 09.10.2021, registered under Section 22C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Saran, District Faridabad.

2. Per prosecution version, on 09.10.2021, upon secret information, raid was conducted by the police party and petitioner was apprehended carrying 66 injections of NRX Buprenorphine (Binorphine) 2ml each. Recovery was made and *Ruqa* was sent to police station. An FIR was registered. Petitioner was taken in custody from the spot.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that the salt 'Buprenorphine' is not a part of psychotropic substance. He further contends that petitioner was neither in possession of alleged intoxicants at the time of search nor was selling them, as alleged. The contraband allegedly recovered from the petitioner is, in fact, a prescription drug. There is also alleged violation of Section 42 of NDPS Act. He also 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. 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.

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4. On the other hand, learned State counsel, on instructions from ASI Devender, opposes the bail petition. He submits that petitioner has committed a serious offence. In case, he is let out on bail, there are chances of his fleeing. Learned State counsel further submits that since commercial quantity of contraband was recovered from petitioner, he does not deserve any concession in view of the rigors of Section 37 of the NDPS Act. Learned State counsel though admits that there is no other case pending against the petitioners.

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 has already been filed and charges were framed on 09.12.2021. Investigation is thus complete *qua* the petitioner and he is not required for custodial interrogation. Trial has commenced and out of total 7 witnesses, only 4 have been examined so far. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Alleged recovered contraband from the petitioner is stated to be a prescription medicine. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already languishing in jail for the last more than 1 year and 9 months in preventive custody, being behind bars since 09.10.2021.

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. 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. Petitioner has clean antecedents. In any case, allegations against petitioner are matter of trial. At this stage, there appears to be a reasonable ground

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that petitioner may not be guilty of the alleged offence and he is not likely to commit any offence while on bail.

9. Petitioner is stated to be 37-year old and being a family man and having responsibilities and fixed abode, it is unlikely that he will flee from the 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 to keep the petitioner in further preventive custody.

11. 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.

12. 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.

13. 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.

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

(ARUN MONGA)
JUDGE

July 28, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No