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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 28.08.2023

Harbhej Singh

....Petitioner

V/s

State of Punjab

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajiv Kumar Saini, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (Oral)

Custody certificate of the petitioner has been tendered in Court by learned State counsel, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.164 dated 26.07.2022, registered under Sections 21, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and Sections 42, 52-A of the Prison Act (added later on) at Police Station, Special Task Force (STF), District STF Wing, SAS Nagar.

3. Per prosecution version, on the basis of secret information, one polythene envelope, containing 500 grams Heroin was recovered from the dashboard of a vehicle, in which the co-accused i.e. brother of the petitioner, namely, Gurbhej Singh was travelling as passenger at the time of alleged recovery. Per report of Chemical Examiner, sample contained Diacetylmorphine. Brother of the petitioner (Gurbhej Singh) was arrested on 26.07.2022. On 28.07.2022, petitioner was brought on production warrant from Amritsar Jail and was arrested in this case.

4. Learned counsel for the petitioner submits that petitioner has been implicated in this case on account of involvement of his brother, namely,

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GurbhejSingh. He further submits that the alleged recovery was not made from the conscious possession of petitioner but has been planted on him. Further submits that co-accused i.e., brother of the petitioner, namely, Gurbhej Singh has been accorded the concession of regular bail by this Court vide order dated 09.08.2023 passed in CRM-M-32056-2023.

4.1 He further submits that petitioner is in custody since 28.07.2022 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

5. On the other hand, learned State counsel 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. She further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of the NDPS Act would be attracted in this case. She further submits that petitioner is involved in one more case under the NDPS Act.

6. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

7. On a Court query, learned State counsel submits that challan was presented on 19.01.2023. Charges were framed on 06.05.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. There are 18 prosecution witnesses out of them, none has been examined till date. Conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas petitioner has already been languishing in jail for more than 01 year and one month in preventive custody, being behind bars since 28.07.2022.

8. 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

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nature of FSL report *qua* contraband, already filed in the Court below 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.

9. 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 the 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 and he is not likely to commit any offence while on bail.

10. Petitioner is stated to be a 22-year old family person and has to look after his parents. He is in the cross-roads of his career and his continued incarceration will permanently ruin his chances to earn livelihood and he may be rendered jobless forever. Having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. Co-accused of petitioner has already been granted the concession of bail.

12. 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.

13. 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.

14. 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.

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15. It is made clear that any observations and/or submissions noted herein above 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.

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

(ARUN MONGA)
JUDGE

August 28, 2023
Ajay

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