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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28964-2021 (O&M)

Date of decision: August 01, 2023

Gurchet Singh @ Cheti

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Arjun Veer Sharma, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petition herein is for grant of bail to the petitioner in a case bearing FIR No.39 dated 11.03.2021, registered under Sections 21, 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, City Patti, District Tarn Taran.

2. Per prosecution version, on secret information, petitioner was apprehended and upon search, an envelope from his trousers pocket was recovered. It contained Heroin, which on weighing was found to be 450 grams. Apart from this, two .32 bore pistols (country made), an empty magazine, 26 live cartridges of .32 bore and an amount of Rs.47,000/- alleged to be drug money was also recovered from the possession of petitioner. An FIR was registered. Petitioner was taken in custody from the spot on 11.03.2021.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that there is violation of Section 42 of NDPS Act. He also contends that the alleged entire recovery of contraband and country pistol etc. has been planted on the petitioner for ulterior motives and due to personal enmity of certain police official against him. He refers to co-ordinate bench orders of this court at Annexures P/2, P/3 and P/4 in support of his argument. He also refers to Para-8 of the preliminary submissions of prosecution report /affidavit dated 17.05.2023 to contend that

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there is an admission, though implicit, that there has been a non-compliance of Section 42 of NDPS Act, inasmuch as, mandatory information, which was required to be sent in writing to the higher officials is stated to have been done verbally. He argues that assertion that information was sent verbally is merely a ruse to overcome the fatal fallacy of non-compliance of mandatory provision, which may ultimately result in acquittal of the petitioner in trial.

3.1. Learned counsel fairly informs that petitioner is accused in two more NDPS Act cases. However, he states his implication therein arises out of old rivalry with the police. He is falsely implicated in both those cases. He was nominated in FIR No.114 dated 20.12.2019 and FIR No.236 dated 19.11.2020, but in both the FIRs, he is on bail. He points out that in one of the FIRs, he was named as an accused on the alleged custodial disclosure statement of prime accused from whom recovery of contraband was made, and in the other FIR, he submits that petitioner was allegedly travelling as a co-passenger, when the alleged recovery was made from another passenger who was travelling in the same car.

3.2. Learned counsel 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. That alone would suffice at this stage for grant of bail. 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.

4. On the other hand, learned State counsel, on instructions from SI Sukhdev Singh, opposes the bail petition. She 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 there is two more cases pending against the petitioner, but he is on bail in those case.

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

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6. On a Court query, learned State counsel informs that challan was filed and charges were framed on 21.09.2021. Investigation is thus complete and he is not required for custodial interrogation. Trial has commenced and out of total 9 witnesses, 2 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 languishing in jail for the last more than 2 years and 4 months in preventive custody, being behind bars since 11.03.2021.

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. Allegations against petitioner are matter of trial. Concededly, secret information was not reduced into writing and the same was sent to the higher police verbally only. 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.

9. Petitioner is stated to be in doing business of commission agent 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.

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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

August 01, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No