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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

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Date of decision: 21.07.2023

Rohi Singh

....Petitioner

V/s

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present: Ms. Gurmeet Kaur, Advocate for the petitioner.

Mr. Virat Rana, AAG Punjab.

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**ARUN MONGA, J. (Oral)**

Petitioner seeks bail in criminal case bearing FIR No.212 dated 18.07.2020, registered under Sections 22 and 29 of the NDPS Act, 1985 at Police Station, Tripri, Patiala, District Patiala.

2. Per prosecution version, a convict, namely, Malkit Singh son of Joginder Singh R/o Navan Gate Mastuana Sahib, Patiala road, Mangwal, Police Station Sadar, Sangrur, serving rigorous imprisonment for 10 years under NDPS Act, was assigned the duty as Sewadar in Jail hospital. On 17.07.2020, his duty was changed from Jail hospital to Langar Ahata due to scarcity of prisoners in Ahata. On 18.07.2020 at about 10:00 p.m., a secret information was received that detainee Malkit Singh was in possession of mobile phone and some contraband. Upon investigation/interrogation, two mobile phones and prescription medicines i.e. Nitrazepam 5 mg -100 tablets, Etizolan - 30 tablets, Lorazepam 2 mg - 20 tablets, diazepam 5 mg - 30 tablets, Clonazepam 0.5 mg – 30 tablets, Buprenorphine and naloxone S/L – 20 tablets, Tramadol 50 mg – 10 tablets, Quetiapine 50 mg – 10 tablets, Open vial of lignocaine and adrenaline injection about 5 ml and two pouches of tobacco, were recovered. During further

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interrogation, name of the petitioner names was also disclosed and he was arrested as a suspect on 22.03.2023.

3. Learned counsel for the petitioner points out that petitioner had been in continuous confinement since the time of his arrest pursuant to registration of an earlier FIR No. 336 dated 25.10.2016, under Sections 365/34, 364-A, 473, 411, 201, 120-B IPC, Section 181 Motor Vehicles Act, 1988 and Section 25 of the Arms Act, 1959 (added later on). Learned counsel further contends that at the time of registration of FIR in question, petitioner was thus already in custody. Merely on the custodial disclosure statement of the prime accused, namely, Malkit Singh, petitioner has been falsely implicated in the present FIR after an unexplained gap of 2 years and 9 months by the prosecution. She further submits that at the relevant time of registration of FIR, petitioner, being an undertrial detainee, was assigned the duty as a helper in Jail hospital and had no access to the outside world.

3.1. Learned counsel for petitioner would further urge that the alleged contraband are prescription drugs and the petitioner is not educated enough to know either the contents and names thereof. It is only with an oblique motive of not having found the real culprit, petitioner is being an easy target has been named as a suspect. She further canvasses that in any case, no recovery was made from the petitioner per prosecution's own case and solely on the basis of custodial statement, he has been implicated. Such a custodial statement is *per se* not admissible as evidence unless there is an independent corroboration or evidence of involvement of the petitioner. In all likelihood prosecution evidence against petitioner would result in his acquittal. She further states that though petitioner was involved in another case but was granted the concession of bail in that case. Currently he is confined in the present case alone.

4. On the other hand, learned State counsel, on instructions from ASI Kirpal Singh, opposes the bail petition. He submits that petitioner has committed a

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serious offence. Challan has been prepared and is likely to be presented soon, as same is pending approval of District Attorney. The quantity of contraband recovered falls under commercial quantity and in view of the specific bar created by Section 37 of the NDPS Act, petitioner does not deserve the concession of bail.

5. I have heard rival contentions of learned counsels for the parties.

6. Challan is likely to be presented soon. Investigation is thus complete *qua* petitioner. He is thus not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. Commencement/conclusion of the trial is likely to take quite some time. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail since 25.10.2016 i.e. 6 years and 8 months, was though taken in custody in another case, where he is on bail now but yet continues in preventive custody in the present case, being behind bars since 22.03.2023 even after bail in the other prior case. He is being kept in 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 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.

8. 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.

9. 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 Magistrate, as the case may be.

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10. 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.
11. 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.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

July 21, 2023  
*Ajay*

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