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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-26639-2023 (O&M)

Date of decision: 16.08.2023

Saggi Singh alias Gaggi

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ashok Kumar Sama, Advocate for petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.74dated 01.07.2021, registered under Sections22 and 29of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Moga, District Moga.

2. Brief facts as per the prosecution case are that, on 01.07.2021, a police party headed by ASI Tarsem was on patrolling duty. On a secret information, they conducted a raid near the canal and on suspicion apprehended petitioner Saggi Singh @ Gaggi and Amandeep Singh @ Amna. On their search, 590 intoxicant tablets of Etonight-0.5 tablets were recovered from petitioner Saggi Singh @ Gaggi and 500 intoxicant tabletsof Etibak-0.5 were recovered from the co-accused.Per FSL report received later, salt etizolam has been found in the tablets recovered from the petitioner. Eachtablet average weight is 180 mg per and total weight of the recovered tablets thus came to 106.2 grams, which falls within the ambit of commercial quantity. Petitioner has been under arrest since 01.07.2021.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. Petitioner has no concern with the recovered intoxicated tablets. Petitioner was not even present at the spot. He was picked up from his house and a false case has been planted on him. He further contends that in the present case, provisions of Section 42 of the NDPS Act were not complied with as the secret information allegedly received by police was neither reduced into writing nor the same was sent to the superior police officer. He further urges that provisions of Section 100 (4) Cr.P.C. have also not been complied with, as neither any independent witness was joined by the police party nor was any person from locality joined in the investigation. Further argues that co-accused of thepetitioner, namely, Amandeep Singh @

Amandeep Kumar @ Amna has already been accorded concession of bail by this court. Petitioner's case is at par with co-accused Amandeep Singh who is on bail and yet he continues to be 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. 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.

4. On the other hand, learned State counsel, on instructions from ASI Tarsem 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 petitioner does not deserve the concession of bail. She submits that another case under Prisons Act is pending against the petitioner and petitioner was also convicted in an NDPS case.

5. In rebuttal, learned counsel for the petitioner submits that petitioner is already on bail in one case out of two and in the second NDPS case, he has already undergone his entire sentence.

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 filed on 22.09.2021 and charges were framed. Trial has since commenced, petitioner is thus not required for custodial interrogation. Out of total 14 witnesses, none has been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. 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 02 years and 01 month in preventive custody.

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 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.

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 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.
10. Petitioner is stated to be a 43-year old family person having wife and a minor child, who are totally dependent on him and in his absence, they are living in sheer penury. It is unlikely that he poses any flight risk and/or will flee from trial proceedings.
11. Co-accused Amandeep Singh has been granted concession of bail by this Court vide order dated 28.02.2023 (Annexure P-2). Role attributed to the petitioner appears to be at par with that of his co-accused Amandeep Singh.
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, 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.
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.
15. 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.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

16.08.2023
vandana

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