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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-27270-2023 (O&M)

Date of decision: 27.07.2023

Sunil Kumar

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in a case bearing FIR No.160 dated 09.07.2022, registered under Section 21 (A), 22 (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985(for short 'NDPS Act') at Police Station, Lambi, District Sri Muktsar Sahib.

2. Per prosecution version, on 09.07.2022 petitioner was apprehended being in conscious physical possession of 900 tablets of prescription drug-Clovedol-100 SR containing salt Tramadol Hydrochloride and 1.30 grams of heroin. He was found carrying it without any permit or license. Petitioner is in custody since 09.07.2022.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case by the police due to political vendetta. He submits that no recovery was effected from conscious possession of the petitioner. He further submits 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. Neither the secret information was reduced into writing nor sent to higher police officers. He further argues that alleged recovery of heroin effected from the petitioner falls under the non-commercial quantity. He would further urge that even the alleged recovery of 900 tablets of Clovedol-100 SR containing salt Tramadol Hydrochloride was shown to have been recovered from road and not from the

3.1 He further submits that petitioner is in custody since 09.07.2022 and challan has already been presented before the competent Court. Charges have been framed. There are 13 prosecution witnesses but none of the witnesses has been examined till date. Petitioner is not required for custodial interrogation. He further submits that no other case is pending against the petitioner.

4. On the other hand, learned State counsel on instructions from ASI Jaswinder Singh opposes the bail petition. She submits that petitioner has committed a serious offence. She further argues that per report of chemical examiner, the entire quantity of tablets comes within the domain of commercial quantity segment and provisions of Section 37 of NDPS Act are attracted. In case petitioner is granted concession of bail, there are chances of his fleeing from justice. She however, admits that no other case is pending against him.

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

6. Challan is stated to have been presented, charges have been framed. Investigation is thus complete *qua* petitioner. The case is fixed for prosecution evidence but none of the prosecution witnesses out of 13 witnesses has been examined so far. Since trial has commenced, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Commencement/conclusion of the trial is likely to take quite sometime. Whereas petitioner has already been languishing in jail for more than 01 year in preventive custody, he being behind bars since 09.07.2022.

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 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. Petitioner is stated to be 24-year old unmarried person, working as salesman in a shop and has lost his livelihood because of his continued incarceration. Further preventive custody will severely jeopardize his career in getting employment. 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.

9. 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. 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 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.

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

27.07.2023
vandana

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