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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29520-2022 (O&M)

Date of decision: 25.08.2023

Roop Singh @ Rupa

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amit Arora, 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 an undertrial in a case bearing FIR No.104 dated 26.06.2019, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Goindwal Sahib, District Tarn Taran, Punjab.

2. Per prosecution case, on 26.06.2019, ASI Baljinder Singh along with other police officials was on routine patrolling and checking, when petitioner was intercepted by police on suspicion. On seeing the police party, petitioner threw away a polythene bag which he was carrying. On checking, 900 tablets recovered from the said bag. Petitioner was arrested from the spot. Later on, per FSL report, the tablets turned out to be containing 126 grams of narcotic Alprazolam salt.

2.1 Petitioner was admitted to interim bail by learned Special Court, Tarn Taran vide order dated 12.09.2019 awaiting the FSL report. On 25.09.2020, during outbreak of COVID-19 pandemic, challan was presented in the absence of petitioner. Thereafter petitioner approached this Court for grant of anticipatory bail. Vide order dated 05.07.2021 (Annexure P-2), petition was disposed of with liberty to the petitioner to surrender within 10 days. Petitioner did not surrender, resulting in cancellation of his interim vide order dated 29.07.2021. Non-bailable warrants of arrest were issued and yet he did not appear. Petitioner was then declared as proclaimed offender vide order dated 04.01.2022. He was arrested on 04.02.2022 and is in custody ever since.

3. Learned counsel for the petitioner would argue that petitioner had no intention of evading Court process having once been granted bail vide order dated 12.09.2019 awaiting the FSL report. He submits that since the FSL report was awaited, no further intimation was given to petitioner during intervening pandemic. He remained under the impression that as and when required, he will be issued notice and it is thereafter that he would have to join proceedings. No proper or effective service of the court warrants was carried out on the petitioner.

3.1 Be that as it may, counsel contends that unintentional absence before the trial Court was in the peculiar pandemic circumstances and the same led to his being declared as Proclaimed Offender without causing any fresh service or intimating him to cause appearance before the trial Court after the receipt of FSL report.

3.2 Learned counsel further contends that mandatory provisions of NDPS Act were not complied with in the present case. No independent witness was joined by the police party. Alleged recovery has been planted on him. Petitioner has thus been falsely implicated. Petitioner is not involved in any other case.

3.3. Learned counsel for the petitioner further submits that in any case, alleged contraband recovered from the petitioner was weighed along with plastic bag and it is thus that the total weight is stated to be 126 grams, which too is marginally higher than non-commercial quantity. The commercial quantity of Alprazolam salt starts from 100 grams and in this case, the weight of plastic bag is also included in 126 grams of weight. There is every chance that recovery may fall in non-commercial quantity.

3.4 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 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 rigors of Section 37 of NDPS Act would be attracted in this case. She further submits that

petitioner was declared a proclaimed offender in this case. 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. On a Court query, learned State counsel, on instructions from ASI Mashwinder Singh, submits that challan was filed on 23.09.2020 and charges were framed on 02.03.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of eight prosecution witnesses, one has been examined so far. Conclusion of trial will take some 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 01 year and 06 months, being in custody since 04.02.2022.

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 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. 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.

9. Petitioner is stated to be 41-year old family person and only bread winner of his family members, who are living in penury in his absence. Being a family man with clean antecedents, having fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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, 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.
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

25.08.2023
vandana

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