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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-29937-2022 (O&M)****Date of decision: April 20, 2023**

Jagdev Singh @ Jaggi

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Randeep Singh Waraich (Rana), Advocate,
Mr. Ravi Kumar, Advocate for petitioner.

Ms. Anju Sharma Kaushik, DAG Punjab.

ARUN MONGA, J. (ORAL)

Present petition is filed by petitioner, seeking bail in criminal case bearing FIR No.0016 dated 22.01.2020, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 473 of Indian Penal Code, 1860 (for short 'IPC') added later on) at Police Station, Special Task Force, STF Wing, Phase-IV, SAS Nagar, Punjab.

2. Per FIR, on 22.01.2020, a police party headed by Inspector Harbans Singh was on routine search for drug peddlers. They erected *nakabandi* (barricading) on a link road. At about 2:15 p.m., a secret informer divulged that Jagdev Singh @ Jaggi (petitioner herein) and his brother Parminder Singh @ Meena, Mandeep Singh @ Mika son of Pindu, Sonu Ghalaut and Harpreet Singh, in connivance with each other are illegally selling heroin. He further informed that all of them were going to Ludhiana from Doraha in a white coloured lancer car bearing No.PB-10-DA-4041. Based on said information, Inspector Harbans Singh sent *ruqa* to police station for formal registration of FIR. Formal FIR was registered. Further investigation was handed over to SI Gurcharan Singh. Contraband-Heroin weighing 02 kg 20 grams was allegedly recovered from

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petitioner and his four co-accused. All the accused were arrested. Petitioner has been in custody since 22.01.2020.

3. Learned counsel for petitioner *inter alia* contends that petitioner has been falsely implicated. Alleged recovery was not made from his conscious possession. Petitioner was driving the car and contraband was recovered from beneath the driver seat. Petitioner was not aware of contents of car. He further submits that even recovery memo does not bear signatures of petitioner.

3.1. Challan has already been presented and charge has been framed. But the trial is proceeding at snail pace.

3.2. Learned counsel would further contends that there are total 22 prosecution witnesses, only 3 witnesses have been examined and rest are official witnesses. Petitioner is in custody since day one of the FIR. Conclusion of trial will take long time. No useful purpose would be served by keeping petitioner in further preventive custody.

3.3. He strenuously argues that rigors of section 37 of the Act are amiss herein, as the trial is likely to result in acquittal of the petitioner. However, due to delay/slow pace of trial, petitioner continues to be under incarceration.

4. Per contra, learned State counsel, under instructions from Sub Inspector Jagtar Singh, opposes the bail petition. She submits that recovery is commercial in nature. Petitioner is a habitual NDPS offender. She further submits that as per custody certificate, there are total five more cases under NDPS Act.

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

6. Petitioner is in custody in this case since 22.01.2020. Investigation is complete. On a Court query, learned State counsel does not controvert that co-accused, travelling in the Car along with petitioner/driver, have been granted bail.

Contraband was recovered from their joint possession. In the premise, therefore,

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role attributed to the petitioner as well as his co-accused who are already on bail is somewhat on similar footing other than the fact that petitioner was driver.

6.1. Furthermore, it transpires that though petitioner has been in custody for more than 3 years (1180 days), but trial is progressing at snail pace, as only 3 witnesses have been examined out of total 22. In any case, witnesses are government officials and I see no probability of them being unduly influenced by the petitioner in case, he is let out during pendency of trial.

6.2. As regards other pending cases against petitioner, learned State counsel, under instructions, informs that in three cases, petitioner is on bail and in two cases, he has been acquitted.

7. Learned counsel for the petitioner also points out that the case in hand has been investigated by an *ad hoc* rank Sub Inspector Gurcharan Singh, whereas he is effectively of the rank of head constable. Thus, there has been serious violation of notification dated 03.09.1987 issued by the Government of Punjab, which envisages that only officers of the rank of ASI and above can exercise powers and perform duties specified under section 42 and 67 of the NDPS act.

8. Considering the overall scenario and without commenting on merits of the case, instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody.

9. 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 Judge, as the case may be.

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.

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11. It is made clear that any observations made hereinabove shall not have any effect on merits the case as the same are for the limited purpose of bail hearing 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

April 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No