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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-29821-2023 (O&M)

Date of decision: August 18, 2023

Rahul Kumar alias Rohit

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Mohit Thakur, AAG 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.156 dated 28.10.2022, registered under Sections 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Patiala, District Patiala.

2. Per prosecution version, on 28.10.2022, petitioner was intercepted by the police and 7,500 intoxicant tablets of Calludol, 1500 intoxicant tablets of Cosidol and 1000 intoxicant tablets of Cosidol, total 10,000 intoxicant tablets were recovered from his possession. He is in custody since then. Said tablets were found containing salt Tramadol Hydrochloride.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the alleged recovery of prescription medicine-tablets. He submits that mandatory provisions of Section 50 of NDPS Act were not complied with and no independent witness was joined. Petitioner is not involved in any other case. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

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3.1. Learned counsel for petitioner also contends that co-accused of the petitioner, namely Yatin Grover has already been granted concession of bail vide order dated 02.01.2023 (Annexure P-4) by learned Judge, Special Court, Patiala.

4. On the other hand, learned State counsel, on instructions from ASI Kuldip Singh, opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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 informs that challan was filed, and charges were framed on 01.07.2023. Investigation is thus complete and he is not required for custodial interrogation. Out of total 24 witnesses, none has been examined so far. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 9 months in preventive custody, being behind bars since 28.10.2022.

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. 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

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appears to be a reasonable ground that petitioner may not be guilty of the alleged offence.
He is not likely to commit any offence while on bail.

9. Petitioner is stated to be a 26-year old young boy who is on cross-road of his career and his entire life is getting ruined due to his inordinate incarceration. Being a family man and having fixed abode with clean antecedents, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

10. Co-accused of the petitioner has already been granted bail by learned Court below.

11. 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.

12. 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 Judge, as the case may be.

13. 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.

14. 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.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 18, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No