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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34888-2021 (O&M)

Date of decision: July 18, 2023

Seera Ram

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Jasvinder Singh Dhaliwal, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.41 dated 14.05.2021, registered under Sections 22, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Joga, District Mansa.

2. Per prosecution version, on 14.05.2021 petitioner was found in conscious possession of 900 tablets of prescription drug-Calvidol-100 SR containing salt Tramadol Hydrochloride, without any permit. An FIR was registered. Petitioner is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that there is no compliance of mandatory provisions of NDPS Act as neither any gazetted officer nor Magistrate was present on the spot. Petitioner has nothing to do with the alleged recovery. He also submits that petitioner is not involved in any other case. Petitioner is suffering from health problems and his minor son, aged 9 years, is also having vision disability along with mental/ brain problems and requires regular medical supervision. 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 HC Gursewak Singh opposes the bail petition. She submits that petitioner has committed a

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serious offence. Per FSL report, average weight of one tablet of Calvidol-100 SR was 361.08 milligrams. So, total weight of tablets was 324.972 grams, which falls in commercial quantity, since recovery of more than 250 grams is commercial in nature. In case, petitioner is granted concession of bail, there are chances of his tampering with evidence and/ or influencing witnesses. She points out that prosecution evidence has concluded and the case is now fixed for defence evidence after recording of statement of accused/petitioner under Section 313 Cr.P.C. She further submits that in view of the bar of Section 37 NDPS Act, no case is made out to grant regular bail to petitioner and that at this belated stage.

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

6. Instant is a case of alleged recovery of prescription medicine from the petitioner. Petitioner though contends that no such recovery was made from him and it has been planted on him. Be that as it may, same shall be adjudicated by the Court below after conclusion of trial. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is going on and petitioner is not required for custodial interrogation. He is in preventive custody with the apprehension that if released on bail, he may either tamper with evidence and/ or influence witnesses. On both counts, apprehension has been allayed as prosecution testimony is over and therefore, I see no reason as to why petitioner should be kept in further preventive custody.

7. Petitioner has already been in jail for the last more than 2 years and two months in preventive custody, being behind bars from 14.05.2021.

8. Learned counsel also points out that petitioner is 36-year old only bread winner of the family and has wife, and minor children, one of whom is also suffering from 75% vision disability along with mental/ brain problems and need regular medical attention, who are totally dependent on him and in his absence, his entire

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family is living in sheer penury. He too is stated to be a known patient of thyroid dysfunction.

9. That apart, 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.

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 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

July 18, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No