

Ramesh Kumar @ Meshi

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Himani Anand, Advocate
for the petitioner.

Mr. Karan Garg, A.A.G., Haryana.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.153 dated 11.04.2023, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of N.D.P.S Act, added later on), at Police Station, Kurukshetra University, District Kurukshetra.

2. Per prosecution version, one Mahesh @ Meshi was apprehended on 11.04.2023 by police party on the basis of secret information and was found in possession 1 kg 964 grams of Sulfa (*Charas*), without any permit or licence. He suffered a disclosure statement that the said contraband was supplied to him by the petitioner. Basis thereof, petitioner was also arrested two days later and is in custody since 13.04.2023.

3. Learned counsel for petitioner 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 from the prime accused. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. Rigors of section 37 of the Act can not be applied to the petitioner since no recovery of any contraband has been made from him.

There is no likelihood of petitioner tampering with evidence and/ or influencing

prosecution witnesses. She further submits that even antecedents of the petitioner are clean and he is not involved in any other FIR. The petitioner was neither named in the FIR nor was he arrested from the spot. He was arrested only on the basis of disclosure statement of co-accused without any legally admissible evidence. She further submits that even the challan has not yet been presented. In support of her argument that if commercial quantity of contraband is recovered from another accused, but on his custodial statement, subsequently a co-accused is arrested, then the case of the co-accused, as the petitioner herein, stands on a different footing. Being so, she contends that coordinate Benches in such cases have been according concession of bail even if custody period is less than 3 months whereas in the instant case, petitioner has already been in incarceration for more than 3 months. Reference may be had to bail orders passed in CRM-M-4584-2020 titled Binder Kaur alias Goga Vs. State of Punjab and CRM-M-23405-2023 titled Rajesh Vs. State of Haryana.

4. On the other hand, learned State counsel, opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. On a Court query, under instructions from Inspector Zorawar Singh, he submits that challan has though been prepared but the same is in the process of being finalized and same will be filed after the needful is done.

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

6. There is no past criminal history of the petitioner and he is not involved in any other case till date. Custodial statement of accused, which is *per se* may not be admissible in the trial appears to be the sole reason of his implication in the FIR in question. His Counsel would further argue relying on Apex Court's judgment in case '*Sanjeev Chandra Agarwal Vs. Union of India*' (SC) Criminal Appeal No.1273 of 2021, that in a similar case, when accused were arrayed in the FIR on the basis of custodial statement, even though no recovery of any contraband was made from them, the charges framed against them under Sections 27-A and 29-A of the NDPS Act were held

to be unsustainable in the light of '*Tofan Singh Vs .State of Tamil Nadu*' (2021) 4 SCC

1. Likewise, she contends that even in the present case on the strength of a statement suffered by co-accused under Section 67 of the NDPS Act, petitioner cannot be arrayed as an accused. In any case, his alleged involvement on the solitary basis of the aforesaid statement is not sustainable. The contentions of learned counsel may have some merit but the same require adjudication, which can only be done after conclusion of the trial.

7. Commencement/conclusion of the trial is likely to take quit sometime. Challan is stated to finalized and very soon to be filed. Investigation is thus complete *qua* petitioner. He is thus not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. 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 3 months in preventive custody, he being behind bars from 13.04.2023. He 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, particularly when he has clean antecedents. 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 31-year old family man and only bread winner of his family who has added responsibility of his two minor children and wife, who are living in penury in his absence. Being a family man with clean antecedents and no other case pending against him, it is unlikely that he is flight risk or will flee from the trial proceedings. 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. 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.

10. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.
11. 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.
12. 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.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 19, 2023
ashish

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