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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33457-2023 (O&M)

Date of decision: 19.09.2023

Bijender

....Petitioner

versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Satbir Singh Kanwar, Advocate,
For the petitioner.Mr. Vikas Bhardwaj, AAG, Haryana.
*******ARUN MONGA, J. (ORAL)**

Status report by way of affidavit of Ashok Kumar HPS, Deputy Superintendent of Police, Loharu, District Bhiwani, Haryana along with Annexures R-1 to R-3 has been tendered in course of hearing, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.218 dated 17.11.2022, registered under Section 20 (b) II, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Jui Kalan, District Bhiwani.

3. Per prosecution case, on 17.11.2022, a police party was on routine patrol duty. On a secret information, notice under Section 42 of the NDPS Act was prepared and the police party went to the informed place, where a person with suspicious appearance was standing. He tried to flee, but was apprehended and revealed his name as Om Parkash alias Omla. Notice under Section 50 of NDPS Act was served on him and he was searched. From the polythene carried by him, 1 kg. 226 grams of charas (commercial quantity) was recovered. Other necessary formalities of NDPS Act were complied with. He was arrested. He also revealed the name of the petitioner to be the person from whom he had purchased the contraband. Subsequently, the petitioner was arrested on 02.02.2023.

4. Learned counsel for the petitioner submits that petitioner was not named in the FIR. He was implicated only on the basis of disclosure statement of co-accused. He further submits that petitioner has been falsely implicated. Role attributed to the petitioner is that he is the person who supplied the recovered charas to main accused after purchasing it from a lady namely Khushbu at a price of Rs. 9000/- per kilogram and sold the contraband at a price of 12000/- per kg to Om Parkash @ Omla.

4.1. He further urges that the alleged contraband recovered is marginally higher than non-commercial quantity, as 1 kg charas is commercial quantity.

4.2. Learned counsel 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.

5. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He submits that recovery effected falls under the category of 'commercial quantity' and rigors of Section 37 of NDPS Act would be attracted in this case. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He further submits that one other case is pending against him however, he is on bail in that case.

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

7. On a Court query, learned State counsel, on instructions, submits that challan was presented on 01.07.2023 and charges have also been framed. Investigation is complete *qua* petitioner and he is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of 17 witnesses of prosecution, none has been examined. Commencement/conclusion of the trial is likely to take quite sometime as the same 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 languishing in jail for more than 07 months, being in custody since 02.02.2023.

8. 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.

9. 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.

10. Petitioner is stated to be 50-year old family person, whose family members are all dependent on him and in his absence, they are living in sheer penury. Being a person with family responsibilities and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

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, 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.

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

19.09.2023
vandana

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