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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 21.08.2023

Balwant Singh @ Manna

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jagjit Singh, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG 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.74 dated 24.04.2023, registered under Section 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Dharamkot, District Moga, Punjab

2. Per FIR, on 24.04.2023, a police party headed by ASI Raghwinder Parshad, was on patrolling duty when petitioner was seen coming on motorcycle. On seeing the police personnel, petitioner got frightened and tried to turn back the motorcycle but it slipped. He tried to throw away a transparent polythene bag from his right pocket but was apprehended by the police. On checking, 45 intoxicant tablets namely Etizolam weighing 0.43mg/tablets were found in polythene envelope. He was carrying the same without any permit or licence. After adopting the due procedure, the tablets were taken into police possession. Petitioner was arrested on the spot.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He further submits that the alleged recovery was not made from the conscious possession of the petitioner but has been planted on him. Moreover, learned counsel further submits that these are prescription drugs used in the treatment of short term anxiety and insomnia. Further submits

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that petitioner is in custody since 24.04.2023 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars. No other case is pending against him.

4. Per contra, learned State counsel, on instructions from HC Darshan Singh, opposes the bail petition. She submits that petitioner has committed a serious offence and as such he is not entitled to concession of bail. She further submits that alleged recovered quantity fall within the category of commercial quantity and thus, rigors of Section 37 of the NDPS Act would be attracted in this case.

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

6. Challan was presented on 24.04.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Commencement/conclusion of the trial is likely to take quite sometime as it is proceeding at a snail pace. Whereas petitioner has already been languishing in jail for about 4 months in preventive custody, being behind bars since 24.04.2023.

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 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. 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

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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.

9. Petitioner is 35 years old married person, having a family comprising of wife and two minor children, aged 7 years and 5 years. Being a family man and having clean antecedents, it is unlikely that he is flight risk or will flee from the trial proceedings.

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 herein above 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

August 21, 2023
Ajay

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