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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33724-2023 (O&M)

Date of decision: August 17, 2023

Sandeep Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Amandeep Kaur, Advocate for 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.34 dated 10.04.2021, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), at Police Station, Bhikhiwind, District Tarn Taran.

2. Per prosecution version, during routine police patrolling, ASI Charanjit Singh along with other officials, signaled a motor bike rider, namely Sandeep Singh @ Sonu to stop his motorcycle. However, he instead tried to slip away by taking a U-turn. He was apprehended and was found in possession of 260 grams of Heroin in a plastic bag. Subsequently, petitioner was also arrested on 04.04.2023, almost after 2 years of registration of FIR and is in jail since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the basis of disclosure of co-accused, namely Sandeep Singh @ Sonu s/o Sukhdev Singh who stated that it is the petitioner who used to give contraband to him and co-accused after selling the same, gave money to the petitioner. She submits that alleged recovery was effected from said co-accused, which is marginally higher than non-commercial quantity. Petitioner was implicated on the basis of custodial disclosure statement, which is not an admissible evidence. There is no other material on record to connect petitioner with the alleged offence. Also contends that there is violation of

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mandatory provisions of NDPS Act. 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.

3.1. Learned counsel contends that co-accused of the petitioner, namely Sandeep Singh @ Sonu son of Sukhdev Singh, who is a prime culprit, was apprehended with the alleged contraband, has already been granted concession of bail vide order dated 03.07.2023(Annexure P-4) passed in CRM-M-43802-2021 by this Court. Case of the petitioner is on better footing than co-accused. Nothing is to be recovered from him, as alleged recovery was effected from his co-accused.

4. On the other hand, learned State counsel, on instructions from ASI Talwinder Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. She further submits that there is one more case against the petitioner under NDPS Act, but he is on bail in that case. 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 21.04.2023. Investigation is thus complete and he is not required for custodial interrogation. Out of total 15 witnesses, only 04 have 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 4 months in preventive custody, being behind bars since 04.04.2023.

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 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

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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 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 31-year old family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

10. Co-accused of the petitioner, stated to be prime culprit, has already been granted bail by this Court.

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 17, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No