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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****CRM-M-34175-2023 (O&M)****Date of decision: 21.07.2023****Sukhwinder Singh @ Munna****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Ritesh Pandey, Advocate,  
For the petitioner.

Mr. Virat Rana, AAG, Punjab.

**ARUN MONGA, J. (ORAL)**

Petitioner seeks bail in a case bearing FIR No.62 dated 07.04.2023, registered under Sections 21(B), 25, 29 and 27(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Dina Nagar, District Gurdaspur.

2. Per prosecution version, a police party led by ASI Surjit Singh, while conducting a routine search in a private vehicle, apprehended petitioner on a suspicion. 5 grams 500 mg of heroin was recovered from boot space of his scooter. Cash of Rs.2,000/-, alleged to be drug money was also recovered from him. *Ruqa* was sent and FIR registered. Petitioner was arrested from the spot on 07.04.2023 and is in custody ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. No recovery was effected from him. He also 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. 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. He further submits that quantity of contraband alleged to be recovered is intermediary and marginally higher than the small quantity. He would further urge that per prosecution version, alleged recovery effected in present case also includes weight of polythene bag in which it was allegedly kept. If the same is excluded and error of weight is taken into account, the alleged contraband would come under the head of 'small quantity'.

3.1 Learned counsel further argues that as per prosecution version, police party was patrolling on private vehicles, however, details of ownership of said private vehicle are not even mentioned anywhere. Petitioner is not involved in any other case.

4. On the other hand, learned State counsel, on instructions from ASI Rupinder Singh opposes the bail petition. He submits that petitioner has committed a serious offence. He further contends that on interrogation, petitioner disclosed that he had purchased the contraband from co-accused Pooja, who has been nominated in the present case under Section 29 NDPS Act. He further states that in case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He informs that offence petitioner has also been booked under Section 27(A) of the NDPS Act which relates to financing of illicit trafficking of drugs. Section 37 of NDPS Act creates a bar to release accused in cases involving Section 27(A) of the NDPS Act, contends the learned State counsel.

5. I have heard rival contentions of learned counsels.

6. 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. 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.

7. 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 03 months in preventive custody, being behind bars from 07.04.2023 for allegedly found in possession of non-commercial marginally higher than small, bordering intermediary, quantity of contraband. Petitioner is stated to be 32-year old, married person having two minor children and family to look after. He has lost his livelihood because of his continued incarceration. Further preventive custody will severely jeopardize his career in getting employment. 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.

8. Co-accused Pooja, who is stated to be the kingpin and from whom petitioner had allegedly purchased the contraband, has since also been arrested and is in judicial custody. Allegations against petitioner under Section 27(A) of NDPS Act are a matter of trial at this stage.

9. Considering the overall scenario and given that the quantity of contraband allegedly recovered from petitioner was marginally higher than small quantity, 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, 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.

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.

**JULY 21, 2023**  
Shalini

**(ARUN MONGA)**  
**JUDGE**

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