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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34889-2023 (O&M)

Date of decision: 22.08.2023

Pan Singh

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.S.K.Kanojia, Advocate for petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)**CRM-31380-2023**

Application is allowed, as prayed for.

Annexure P-4 is taken on record, subject to all just exceptions.

Main case

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.57 dated 26.04.2023, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Balongi, District SAS Nagar, Mohali.

2. Per prosecution case, on 26.04.2023, ASI Harbhej Singh along with police party on Government vehicle, while on routine patrolling and checking of antisocial elements, was coming from Airport road, Mullanpur. At about 4:15 p.m., when police party reached near T-point Hussainpur, two persons, having black coloured neck pouches/bags, were spotted by the police party. On seeing the police party, they tried to retract towards mango garden. They were apprehended on suspicion. On search 1 kg of opium was recovered from Paan Singh-present petitioner, 2 kg of opium from co-accused Sunil Kumar and 1 kg opium were recovered from co-accused Ominder Singh. FIR was registered. They were all arrested from the spot. Petitioner is in custody ever since.

3. Learned counsel for the petitioner further submits that petitioner has been falsely implicated in this case. He further contends that in the present case, mandatory provisions of Section 50 of the NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioner is not involved in any other case.

3.1 He also submits that nothing is to be recovered from the petitioner and he is not

evidence and/or influencing prosecution witnesses. He further urges that the alleged recovery of contraband from petitioner does not fall in the category of 'commercial quantity'.

3.2. Learned counsel for petitioner further contends that father of petitioner, who was admitted in hospital, expired yesterday. Petitioner is needed at home to perform last rites and other prayer ceremonies.

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. She submits that another case of similar nature is pending against petitioner. Though he is on bail as per order, Annexure P-4, already on record.

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, on instructions from SI Gurpartap Singh, submits that challan though at final stage of preparation, is yet to be presented. Be that as it may, petitioner is not required for any further custodial interrogation. Allegations against him are matter of trial at this stage. Commencement/conclusion of the trial is likely to take quite sometime. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for around 04 months in preventive custody, being in custody since 26.04.2023.

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 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 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 maynot be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

9. Petitioner is stated to be a young student, aged 18 years, who has recently finished his 12th class and is on the cross-roads of his career and his future is getting severely jeopardized due to prolonged incarceration. Having got a family and fixed abode, it is unlikely thathe poses any flight risk and/or will flee from trial proceedings.

9.1 On verifications by the police official present in court, it transpires, that fatherof petitioner indeed expired just yesterday i.e. 21.08.2023.

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, 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.

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 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.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

22.08.2023
vandana

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