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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35172-2023 (O&M)

Date of decision: July 28, 2023

Gurmukh Singh @ Gomma @ Manny

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Sehej Sandhawalia, Advocate for
Mr. Tanvir Singh Attariwala, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in a case bearing FIR No.429dated 06.12.2021, registered under Section22of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), at Police Station Sohana, District SAS Nagar, Mohali.

2. Per the prosecution's account, on 6.12.2021, the police officials on duty, on a suspicion, apprehended four individuals, namely, Yogesh Kumar alias Yogi, Gurmukh Singh alias Gomma alias Manny (petitioner), Harjinder Singh alias Honey, and Gurjinder Singh. They were found to be in possession of 20 vials each of 2ml Buprenorphine Hydrochloride and 10ml Avil. None of the individuals possess any permit or license for these substances, leading to immediate arrest of all of them from the spot.

3. Learned counsel for petitioner argues that the petitioner has been falsely accused in this case. She argues that the FIR is based on undisclosed information that was never recorded or conveyed to senior police officers. Additionally, she points out that one of the co-accused, Yogesh Kumar alias Yogi, an HIV positive patient, has been granted interim bail by an order dated 14.11.2022 (Annexure P-3) passed by this court. The counsel further asserts that there are patent violations of Sections 42, 43, and 50 of the NDPS Act.

Such mandatory provisions of the Act were not followed during the alleged recovery and

seizure of the contraband. Thus, the same would in all likelihood result in acquittal of the

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petitioner. She argues that there is no independent/public witness or gazetted officer were associated during the recovery process. Merely on the self-serving statement of the police official on duty, petitioner has been implicated. Counsel contends that nothing incriminating was recovered from the petitioner, and there is no need for further custodial interrogation. She asserts that the petitioner does not pose a risk of tampering with evidence or influencing prosecution witnesses.

3.1. Ms. Sehej Sandhawalia further argues that the substance allegedly recovered from the petitioner is actually a prescription medicine, Buprenorphine, which is also used for treating and relieving pain in HIV patients. Avil injection, is not a psychotropic substance under the NDPS Act. The counsel points out that, per prosecution's own version, one of co-passengers/co-accused travelling with the petitioner is an HIV patient, and it is common knowledge that prescription medicine Buprenorphine is used in combination with non-prescription medicine-Avil for HIV treatment. She also emphasizes that, in any case, the alleged quantity of substance was not recovered from petitioner's conscious possession, and that too, was of a non-commercial and medicinal nature. Therefore, she urges that the petitioner should be granted bail as an undertrial at this stage.

4. Per contra, the learned State counsel, on instructions from ASI Balvir Singh, opposes the bail petition. She contends that the petitioner has committed a serious offense, and the quantity of contraband recovered from him falls under the 'commercial category,' making him ineligible for bail as per Section 37 of the NDPS Act. The State counsel, though submits that there are no other cases against the petitioner, but expresses concerns that he might flee from trial, if granted bail.

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 has already been filed and charges were framed on 11.04.2022. Investigation is thus complete *qua* the petitioner. There are total 15 witnesses, out of them only 1 has been examined so far. Since trial has commenced, petitioner is thus not required for custodial interrogation.

Alleged recovered substance from the petitioner is stated to be prescription medicine.

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7. 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 1 year and 7 months in preventive custody, being behind bars from 06.12.2021.

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. Petitioner has clean antecedents. 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 and he is not likely to commit any offence while on bail.

10. Petitioner is stated to be 34-year old and being a family man having family responsibilities and fixed abode, it is unlikely that he will flee from the trial proceedings. Co-accused of the petitioner has already been granted concession of interim bail by a co-ordinate Bench of this Court, though he being an HIV patient.

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.

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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

July 28, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No