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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37576-2022 (O&M)

Date of decision: 25.09.2023

Yogesh Kumar @ Jogi

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Tanvir Singh Attariwala, Advocate,
For the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Custody certificate of the petitioner has been tendered in course of hearing, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.429 dated 06.12.2021, registered under Section 22 of 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.

3. Per the prosecution's account, on 06.12.2021, the police officials on duty, on a suspicion, apprehended four individuals, namely Yogesh Kumar alias Yogi (petitioner), Gurmukh Singh alias Gomma alias Manny, Harjinder Singh alias Honey and Gurjinder Singh. They were found to be in possession of 20 vials each of 2 ml Buprenorphine Hydrochloride and 10 ml Avil. None of the individuals possessed any permit or license for these substances, leading to immediate arrest of all of them from the spot.

4. Learned counsel for the petitioner submits that petitioner is suffering from dreadful HIV disease. He was also granted interim bail by this Court vide order dated 14.11.2022 being an HIV patient. Petitioner never misused the concession of interim bail granted to him. Learned counsel for the petitioner argues that present FIR is based on undisclosed information that was never recorded or even conveyed to senior police officers. He

mandatory provisions of the Act were not followed during the alleged recovery and seizure of the contraband. He 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. He further submits that alleged recovery of the intoxicants is from the car of the co-accused in which four persons were travelling and, recovery was not effected from the petitioner. Petitioner is not the owner of the car from which alleged intoxicants have been recovered. False recovery has been planted on the petitioner. Petitioner has thus been falsely implicated in the present case.

4.1 He further contends 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. Buprenorphine, is not a psychotropic substance under the NDPS Act. Learned counsel for the petitioner submits that petitioner being HIV patient has to regularly take Buprenorphine as a palliative care. Medical record of the petitioner is annexed as Annexure P-3.

4.2 Learned counsel also submits that 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.

4.3 He submits that co-accused, namely, Gurmukh Singh @ Gomma @ Manny and Harinder Singh @ Honey, Gurjinder Pal Singh have been granted regular bail by this Court and a coordinate Bench of this Court vide orders dated 28.07.2023, 02.08.2023, 23.08.2023.

5. On the other hand, learned State counsel opposes the bail petition. He 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. He further submits that another case under NDPS Act is pending against him.

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

7. Learned State counsel, on instructions from ASI Balvir Singh, submits that challan has already been filed and charges were framed on 11.04.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Alleged recovered substance from the petitioner is stated to be prescription medicine. Out of 15 prosecution witnesses, only one has been examined. 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 in jail for more than 11 months and 19 days, per custody certificate.

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 have already been examined.

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. 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.

10. Co-accused have already been granted bail by this Court.

11. Petitioner is stated to be a young boy, aged 23 years and due to prolonged incarceration his health is deteriorating very fast being an HIV patient. Having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

12. 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.

13. 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.

14. 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.

15. 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.

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

(ARUN MONGA)
JUDGE

25.09.2023
vandana

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