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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35820-2023 (O&M)

Date of decision: 24.08.2023

Manjit Singh @ Makhni

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Dilpreet Singh Gandhi, 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.202dated 20.11.2021, registered under Section21-Cof the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station,Special Task Force, SAS Nagar, Mohali.

2. FIR was registered on the basis of secret information received by SI Anokh Singh. Petitioner was apprehended on suspicion. During his search in the presence of DSP Arun Sharma, one polythene envelope containing 290 grams Heroin was recovered from left pocket of his Capri. Petitioner was arrested on 20.11.2021 and since then he is in custody.

3 Learned counsel for the petitioner submits that alleged recovery has been planted on him and thus petitioner has been falsely implicated in this case.He 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.

3.1. Learned counsel for petitioner would further canvass that alleged contraband recovered was marginally higher than the commercial quantity. More than 250 grams of heroin falls under the category of 'commercial quantity'. He would further urge that per prosecution version, alleged recovery effected from petitioner in the present caseis including the weight of polythene bag and if the same is excluded and error in

weight is taken into account, the alleged recovered contraband would come under the head of 'non-commercial'.

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 six other cases of similar nature are pending against him, out of which, he is an undertrial in 3 cases and in other three cases, he is required on production warrants.

4.1. In rebuttal, learned counsel for petitioner submits that out of those three cases in which petitioner is undertrial, he is on bail in two cases and in another case in which production warrants were issued against him, he has been acquitted.

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 Anokh Singh, submits that challan was filed on 08.04.2022 and charges were framed on 25.05.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of 11 witnesses, none has been examined so far. Commencement/conclusion of trial will take some time. 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 01 year and 09 months, being in custody since 20.11.2021.

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 36-year old only breadearner of his family comprising of wife and two minor children, who are living in sheer penury in his absence. He has already lost his livelihood due to prolonged incarceration. He is not a threat to society in any manner and not flight risk in any manner, given that he has a family to look after and has a fixed abode.
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

24.08.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No