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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42853-2023 (O&M)

Date of decision: 05.09.2023

Princepal Singh @ Sidhu

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Malkiat S. Hundal, Advocate,
For the petitioner.

Mr. Shubham Kaushik, AAG, 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.174 dated 17.12.2022, registered under Sections 22C, 27-A, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Sultanwind, Amritsar.

2. Per FIR, on secret information, a raid was conducted by police officials on 17.12.2022 and 5000 intoxicant tablets tramadol hydrochloride were recovered from main accused Varinder Singh, of whom petitioner and co-accused are alleged to be accomplices. An FIR was registered in this case. On the custodial statement of main accused, a further raid was conducted on the same day i.e., 17.12.2022. Petitioner and co-accused, namely, Vicky @ Laddu were also arrested along with recovery of 2000 and 2500 intoxicant tablets of the same salt, *ibid* respectively. Petitioner has been in custody ever since.

3. Learned counsel for the petitioner submits that co-accused namely, Vicky @ Laddu has already been granted concession of bail by this Court vide order dated 14.07.2023 (Annexure P-5) in CRM-M-32753-2023 from whom 2500 intoxicant tablets of tramadol hydrochloride were recovered on the basis of custodial statement of main accused-Varinder Singh.

3.1 He also points out that petitioner was admitted to interim bail by learned trial Court vide order dated 12.04.2023 (Annexure P-2) awaiting the FSL report. But petitioner could not be released as he could not furnish bail bonds/surety bonds. In the meantime, challan was presented on 22.05.2023 and FSL report was received and thus petitioner is in continuous custody since 17.12.2022.

3.2 Further argues that no recovery has been actually effected from the possession of the petitioner. He has no link with the alleged recovery. Recovery has been planted on the petitioner.

3.3. He further submits that mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioner has thus been falsely implicated in the present case.

3.4 Learned counsel also submits that nothing is to be recovered now 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. 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 submits that one other case of similar nature is pending against him, however, he is on bail in that matter.

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

6. Learned State counsel, on instructions from ASI Angrej Singh, submits that challan *qua* petitioner was filed on 22.05.2023 and charges were framed on 03.07.2023. Out of 13 prosecution witnesses, none has been examined so far. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Commencement/conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for more than 08 months and 15 days, being in custody since 17.12.2022.

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 have already been examined.

8. 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.
9. Co-accused has already been granted concession of bail by this Court.
10. Petitioner is stated to be a 33-year old family person. He is sole breadwinner of his family and they are living in sheer penury in his absence. He has added responsibility to look after his old widowed mother. Being a family person and fixed abode, it is unlikely that he is flight risk or will flee from the trial proceedings.
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, 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.
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

05.09.2023
vandana

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