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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 20.09.2023

Hardeep Singh

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Ms. Himani Anand, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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.270 dated 14.06.2023, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Kurukshetra University Kurukshetra, District Kurukshetra.

2. Per FIR, SI Jai Kishan along with police officials was on routine patrolling duty. A secret information was received that petitioner along with co-accused Mukhtiar Singh was indulging in sale of contraband. Accordingly, on the day of occurrence, a barricade was erected on SYL river bridge towards Dhand. After some time, a motorcycle was seen coming from Dhand side which was being driven by petitioner with co-accused Mukhtiar Singh as a pillion. They were signaled to stop and were apprehended by the police party. On checking 54 kilograms of poppy straw contained in a plastic bag were recovered from the boot of motorcycle without any permit or licence. FIR was registered and petitioner was arrested on 14.06.2023.

3. Learned counsel for the petitioner contends that despite the place of recovery being thickly populated, no independent witness was joined which raises suspicion with regard to alleged conscious possession of the contraband. Apart from confessional statement there is no iota of evidence to support the case of prosecution. She submits that confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in trial of an offence under NDPS Act. She further submits that petitioner is entitled to concession of bail as per ratio of law laid down in *Tofan Singh vs. State of Tamil Nadu*¹.

3.1 Further contends that quantity of contraband allegedly recovered from petitioner is marginally higher than the non-commercial quantity. He would further urge that per prosecution version, alleged recovery effected from petitioner in the present case is including the weight of plastic 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'. Moreover, nothing is to be recovered from the petitioner and, thus, no useful purpose would be served by keeping him behind bars.

3.2 She further argues that petitioner is not required for custodial interrogation. Petitioner is in custody since 14.06.2023. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. Petitioner is not involved in any other case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that the quantity of contraband recovered falls under commercial quantity as per provision of the NDPS Act and rigors of Section 37 of NDPS Act would be applicable in this case. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He, however, admits that petitioner is not involved in any other case.

¹ (2021) 4 SCC 1

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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 Inspector Devender Kumar, submits that challan is yet to be presented, though it is likely to be submitted shortly in due course. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation.

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 more than 03 months in preventive custody, being behind bars since 14.06.2023.

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 Court below 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. 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. 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. Petitioner is stated to be 35-year old having family comprising of wife, two children and further added responsibility of looking after his ailing mother. He is sole breadwinner of his family. They all are dependent on him, who

are living in sheer penury in his absence. Being a family man with clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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 bailon his furnishing bail bonds and surety bonds to the satisfaction of learned *Ilaqa* Magistrate/Duty Magistrate, 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 herein above 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 Court below shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

September 20, 2023
Ajay

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