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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-37574-2023 (O&M)

Date of decision:08.08.2023

Amlesh Sawhney

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:** Mr. Munish Behl, 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 undertrial in case bearing FIR No.323 dated 08.12.2022, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Sadar Ambala, District Ambala.

2. On 08.12.2022, petitioner and co-accused Ashok Sawhney were apprehended by the police party at Jamitgarh Road, Ambala City on the basis of secret information and at that time, petitioner was found in possession of 3 kgs 10 grams of opium (commercial quantity) and co-accused was also found in possession of Rs.80,000/- As per case of prosecution, both the accused are relatives and petitioner procured opium from Bihar and sold the same to co-accused Ashok Sawhney, who further sold it to his customers. On these facts, FIR was registered.

2.1. Petitioner was arrested on 08.12.2022 and has been in custody ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that allegations against the petitioner are false and there is not even an iota of truth in the same. Further argues that co-accused of the petitioner, namely, Ashok Sawhney has already been accorded concession of bail by this court. Petitioner's case is at par with co-accused Ashok Sawhney and yet he continues to be in jail, he contends. He also argues that on the ground of parity alone, petitioner is

entitled to be released on bail during pendency of trial.

3.1 Learned counsel further submits that said recovery has been planted. No independent witness was joined in the present case. He submits that provisions of NDPS Act have not been complied with. He further submits that entire seizure and sealing process is complete.

3.2 He further 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. He further urges that further incarceration of petitioner would be violative of his right enshrined under Article 21 of the Constitution of India and bar of Section 37 NDPS Act can be diluted bearing in mind the right to a speedy trial, given that petitioner is behind bars since 08.12.2022 and trial is likely to take a long time to conclude.

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. She further submits that recovery of contraband falls within the ambit of commercial quantity and rigors of Section 37 of the NDPS Act would be attracted in the present case. She further submits that one of the co-accused, namely, Sanju Devi is still at large. However, she admits that there is no other case pending against the petitioner.

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

6. On a Court query, under instructions from SI Jarnail Singh, learned State counsel submits that challan was presented on 25.05.2023, charges are yet to be framed. There are 15 prosecution witnesses out of them, none has been examined till date. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Commencement/conclusion of the trial is likely to take quite sometime. Allegations against petitioner are a matter of trial at this stage.

7. Co-accused/Ashok Sawhney has been granted concession of bail by this Court vide order dated 31.07.2023. Role attributed to the petitioner appears to be at par

with that of his co-accused Ashok Sawhney. In the premise, I see no ground as to why petitioner should not be meted out with similar treatment.

8. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for 08 months in preventive custody, he being behind bars since 08.12.2022. He 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. 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 25-year old and having one school going minor daughter and wife to look after. Being a family person with clean antecedents, it is unlikely that he is flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime.

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 on his furnishing bail bonds and surety bonds to the satisfaction of Ld. 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

08.08.2023

vandana

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No