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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-37561 OF 2023
DATE OF DECISION: 03.10.2023****Sunil Kumar****...Petitioner****Versus****State of Punjab****...Respondent****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. S.K. Kanojia, Advocate,
For the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)**CRM-40582-2023**

For the reasons stated in application, same is allowed and documents contained at Annexure P-3 are taken on record, subject to all just exceptions.

CRM-40859-2023

For the reasons stated in application, same is allowed and documents contained at Annexures P-4 and P-5 are taken on record, subject to all just exceptions.

MAIN CASE

After being declined bail by learned trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.57 dated 26.04.2023, registered under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Balongi, District SAS Nagar, Mohali.

2. Per prosecution case, on 26.04.2023, ASI Harbhej Singh along with police party was on routine patrolling duty on government vehicle at

Airport road, Mullanpur. At about 4:15 p.m., when police party reached near T-point Hussainpur, two persons, having black coloured neck pouches/bags, were spotted by police party. On seeing the police party, they tried to flee but were apprehended on suspicion. They disclosed their names as Paan Singh and Ominder Singh. On search 1 kg of opium each was recovered from both of them. FIR was registered. They were arrested from the spot.

2.1 During investigation, name of present petitioner was added on the basis of disclosure statement of accused Paan Singh. Petitioner Sunil Kumar along with car make Swift Dzire bearing registration No.UP-24-AS-3849 was apprehended on the same day i.e., 26.04.2023 . Upon search of said car, 2 kg opium was recovered from the dash board of the car which was taken into possession.

3. Learned counsel for the petitioner contends that mandatory provisions of Section 50 of NDPS Act were not complied with. No independent witness was joined by the police party. Petitioner has thus been falsely implicated in this case. He also submits that petitioner has clean antecedents and is not involved in any other case.

3.1 He further urges 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.

3.2. Learned counsel further contends that co-accused, namely Pan Singh, has been granted concession of bail by this Court vide order dated 22.08.2023 and seeks parity.

4. On the other hand, learned State counsel opposes the bail petition. In case, petitioner is granted concession of bail, there are chances of his fleeing from trial proceedings. 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.

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 ASI Harbhej Singh, submits that investigation is complete and challan was presented on 12.09.2023. Therefore, petitioner is not required for any further custodial interrogation. There are 17 witnesses of prosecution but none has been examined so far. Commencement/conclusion of trial is likely to take quite sometime. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for more than 05 months in preventive custody, being in custody since 26.04.2023.

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 may not be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

9. Petitioner is 25-year old family man. He has been recently blessed with a baby boy. Having got a family and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

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.

OCTOBER 03, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No