

CRM-M-38201-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 11.08.2023

Rajan Sharma @ Baba @ Doctor

....Petitioner

V/s

State of Punjab

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Brijeshwar Singh Bhalla, Advocate for the 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 undertrial in a case bearing FIR No.236 dated 09.09.2020, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Gate Hakima, District Amritsar.

2 Per FIR, on the day of incident in question, police party headed by ASI Gurjit Singh were checking vehicles after erecting a barricade. On the basis of suspicion, petitioner along with co-accused, travelling on a scooter were signaled to stop. However, they instead tried to turn back, but the Scooterslipped. When they tried to throw the transparent polythene bags hidden in their respective shirts, they were apprehended. On checking, 850 intoxicant tablets of PROWON SPAS make were recovered and taken into police possession after adopting due procedure.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He further submits that the alleged recovery effected from the plastic bag has wrongly been planted on the petitioner. He further submits that there is no compliance of Section 50 of the NDPS Act in the

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present case. Learned counsel further points out that the other co-accused has been accorded the concession of regular bail by a coordinate Bench of this Court as per order contained at Annexure P-2. He further submits that challan has been presented and conclusion of trial will take long time, thus, no useful purpose would be served by keeping the petitioner behind the bars. Petitioner is not involved in any other case.

4. Per contra, learned State counsel, on instructions from ASI Gurmeet Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. The quantity of contraband recovered falls under the commercial quantity and as such he is not entitled to concession of bail.

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

6. Petitioner was earlier granted bail vide an order dated 23.10.2020 with the condition that on receipt of report of Chemical Examiner if the quantity of psychotropic substance comes within the ambit of commercial quantity then his bail bonds would be deemed to be cancelled and he would be required to surrender before learned trial Court. However, during the pendency of the case, challan was presented in his absence. Being unaware, petitioner could not appear on the date fixed resulting in cancellation of his bail bonds. Subsequently, when he got to know about the said proceedings, petitioner on his own surrendered before the Court below on 27.04.2023. He was taken in custody and continues to languish in jail ever since.

7. Challan was presented and charges were framed on 25.05.2023. There are 12 prosecution witnesses out of them, none has been examined till date. Investigation is thus complete *qua* petitioner, he is 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

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quite sometime as it is proceeding at a snail pace. Whereas petitioner has already been languishing in jail for 4 months and 27 days in preventive custody, being behind bars since 27.04.2023 and earlier also he remained in judicial custody from 15.09.2020 to 27.10.2020.

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. 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.

10. Petitioner is stated to be 29-year old and has an added responsibility of looking after his parents. Being a family man and having clean antecedents, 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 on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court,

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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 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 Trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

August 11, 2023
Ajay

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