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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 04, 2023

Aashish Garg

....Petitioner

versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Preetinder S. Ahluwalia, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

Ms. Punita Sethi, Senior Panel Counsel for respondent No.2-UOI/ NCB.

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**ARUN MONGA, J. (ORAL)**

After being declined bail by the trial Court, this is the second foray of the petitioner before this Court seeking his release as an undertrial in a case bearing Complaint/ Crime No.3 dated 29.06.2021/26.09.2021, for offences punishable under Sections 21, 22, 25, 27-A, 28, 29, 30 and 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Central Bureau of Narcotic Janakpuri, New Delhi, (petitioner has been charge sheeted for offences punishable under Sections 8(c) read with Sections 22(c), 29, 28, 21(C), 22(C), 30 and 27A of the NDPS Act, vide order dated 15.04.2023). First petition was dismissed by a co-ordinate Bench of this Court then seized of the matter, vide order dated 04.03.2022 passed in CRM-M-49006-2021.

2. Prosecution case is that based on secret information, Central Bureau of Narcotic carried out search/raid on 29.06.2021, at the house of one Sachin (co-accused of petitioner-Ashish Garg) in Agarwal colony, Jhajjar. Heavy quantity of prescription injections/medicines were recovered/seized, which fall in the category of narcotic and provocative drugs under the NDPS Act. Sachin was arrested same day i.e. on 29.06.2021. A detailed list of recovered NDPS medicines was prepared at the spot, which is as follows:

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| Sr. No. | Medicine                | Psychotropic Substance         | Quantity       |
|---------|-------------------------|--------------------------------|----------------|
| 1.      | Radol-100               | Tramadol (100 mg)              | 120 tabs       |
| 2.      | Ultraking               | Tramadol (37.5 mg)             | 4350 tabs      |
| 3.      | TRD-Conjet              | Tramadol (2ml)                 | 600 ampoules   |
| 4.      | TRD-Conjet              | Tramadol (2ml)                 | 30 ampoules    |
| 5.      | Tramosun                | Tramadol (2ml)                 | 4000 ampoules  |
| 6.      | Ultradol-100 SR         | Tramadol                       | 500 tabs       |
| 7.      | Alpramed                | Alprazolam (0.5 mg)            | 58200 tabs     |
| 8.      | Alpramed                | Alprazolam (0.25 mg)           | 1800 tabs      |
| 9.      | Dolopent                | Pentazocine (1ml)              | 3700 ampoules  |
| 10.     | KUFDEINE                | Codeine Phosphate (100 ml)     | 42 bottles     |
| 11.     | Ativan 2mg              | Lorazepam (2mg)                | 720 tabs       |
| 12.     | Biorex-New              | Codeine Phosphate (100 ml)     | 100 bottles    |
| 13.     | PILREST                 | Diazepam (2ml)                 | 50 ampoules    |
| 14.     | Mephenterminesuphateinj | Mephenterminesulphate (10 ml)  | 520 injections |
| 15.     | Termin                  | Mephenterminesuplphate (30 ml) | 190 ampoules   |

A crime case was registered by Central Bureau of Narcotic before the Special Judge for NDPS Act cases, Jhajjar vide complaint Annexure P/1. In the course of investigation, incriminating evidence viz. text messages and telephonic conversation between petitioner-Ashish Garg with the accused-Sachin was unearthed. That apart other material regarding their joint involvement of supply of prescription injections/medicines in illegal and unlawful manner was also discovered. Accused Sachin, from whom the recoveries were effected, could not produce any license or permit to possess the prescription medicines/narcotic substance, as above. Subsequently, based on disclosure statement of Sachin, petitioner was also arrested on 02.09.2021. He is in custody ever since.

3. Learned counsel would canvass that custodial disclosure statement of co-accused, namely Sachin, is the primary reason of implication of petitioner, however, such a statement is not *per se* admissible in evidence. He also submits that no recovery was effected on his alleged disclosure statement. There is nothing on record to show complicity of the petitioner with the commission of alleged offence.

3.1. He further submits that upon recording of alleged disclosure statement of petitioner, premises of M/s Maa Ambay Medical Agency (stated to be authorised pharmaceutical supplier), Muzaffarnagar was also searched. No stock of any NDPS medicines was found there. He also urges that statement of proprietor medical agency i.e.

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Manoj was recorded on 26.11.2021, wherein he stated that he knew the petitioner and his agency dealt only with non-NDPS medicines. His agency had neither purchased nor sold any NDPS medicines to the petitioner.

3.2. Learned counsel would contend that, allegedly, Sachin made a disclosure statement stating that Pentazocine injections and Tramadol injections were supplied to him by one Ankur (on bail) i.e., a Medical Representative (MR) of M/s Modi Mundi Pharma (stated to be authorised pharmaceutical supplier).

Whereas, *qua* petitioner, Sachin disclosed that Alprazolam tablets were supplied by him, and rest of the drugs were supplied by M/s Mahavir Pharma (stated to be authorised pharmaceutical supplier), located at Bahadurgarh. Petitioner was thus nominated as an accused.

3.3. Learned counsel for petitioner contends that no recovery, either from person or the premises, of petitioner has been effected. He submits that name of the petitioner was not even part of the purported secret information which CBN/prosecution had.

3.4. Learned counsel further contends that in order to show complicity of the petitioner with the alleged recovery, investigating agency has vaguely mentioned about certain call recordings between petitioner and co-accused-Sachin pertaining to NDPS drugs. He further submits that in the earlier bail petition, an affidavit dated 09.01.2022 was filed by the respondent No.2-Bureau, wherein it was admitted that conversation does not refer to any particular drug. Rather, reference of “5” and “300” in the conversation could be in the context of some other subject matter.

3.5. Learned counsel further contends that co-accused, namely Ankur Garg, who was identically nominated on the disclosure of aforesaid accused-Sachin, has been granted bail vide order dated 29.05.2023 by learned trial Court. He further argues that petitioner is also entitled to be released on bail on the ground of parity.

3.6. Learned counsel for the petitioner further submits that petitioner has been in custody for the last more than 1 year and 11 months. Charges against him have also been framed. There is nothing on record to apprehend that petitioner will tamper with

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evidence and influence the prosecution witnesses, since they all are official witnesses. No useful purpose would be served by keeping him behind bars.

3.7. Learned counsel for petitioner also relies on various decisions rendered in **Dheeran Kumar Jaina versus Union of India**<sup>1</sup>, **Nitish Adhikary @ Bapan versus State of West Bengal**<sup>2</sup>, **Bikram Singh @ Bikkar and others versus State of Punjab and others**<sup>3</sup>, **Sukhwinder Singh versus State of Punjab**<sup>4</sup>, **Gurpreet Singh @ Mani versus State of Punjab**<sup>5</sup> and **Parvinder Singh @ Gaggu versus State of Punjab**<sup>6</sup> to contend that petitioner is entitled to be released on bail on the ground of prolonged custody and delayed trial. Inordinately long period of incarceration is violative of Article 21 of the Constitution of India, he would contend.

4. On the other hand, learned counsel for respondent No.2, assisted by learned State counsel, opposes the bail petition. She submits that petitioner has committed a serious offence. Petitioner has *inter alia* admitted in his voluntary statement under Section 67 of NDPS Act that he had supplied 60,000 Alprazolam tablets to accused-Sachin, without bill, which weighed 7224.18 grams (commercial quantity being 100 grams). The recovery of contraband falls under commercial quantity. She also refers to cloned data of seized mobile phone of co-accused/Sachin from where conversations/texts between Sachin and petitioner, regarding sale and purchase of NDPS medicines, were retrieved. Greater details are mentioned in reply dated 02.09.2023, tendered in course of hearing, which is taken on record. She further submits that petitioner, if enlarged on bail in present case, there is every likelihood that he may tamper with the evidence and/or influence the witnesses.

4.1. Learned counsel for respondent No.2 relies on **Narcotics Control Bureau versus Mohit Aggarwal**<sup>7</sup> to contend that parameters of bail under Section 37 NDPS Act are very narrow and limited. This is not a case where it is safe to conclude that petitioner has any ground to believe that he is not guilty. She admits that petitioner is not involved in any other case.

<sup>1</sup>CRA-965-2021 (arising out of SLP (Crl.) No.4432 of 2021), decided on 07.09.2021

<sup>2</sup>Special Leave to Appeal (Crl.) No.5769 of 2022, decided on 01.08.2022

<sup>3</sup>CRM-M-5374-2021 and CRM-M-37169-2020, decided on 20.09.2021

<sup>4</sup>CRM-47812-2022 IN/AND CRM-M-48421-2021, decided on 12.12.2022

<sup>5</sup>CRM-M-17503-2020, decided on 17.03.2022

<sup>6</sup>CRM-M-1616-2023, decided on 17.01.2023

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4.2. She does not controvert grant of concession of bail to the co-accused, namely, Ankur Garg, by learned trial Court.

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 counsel for respondent No.2 informs that challan was filed, charges were also framed, and trial commenced thereafter. Petitioner is thus not required for any further custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. Conclusion of trial is still likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the past more than 2 years, being behind bars since 02.09.2021.

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 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. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence. He is not likely to commit any offence while on bail.

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. At this stage, there appears to be reasonable ground that petitioner may not be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

10. It is stated that petitioner is 32-year old unmarried who was working as an employee in a private company and has lost his livelihood due to his continued incarceration. His further incarceration may render him jobless forever. He has also added responsibilities of his old aged parents. Being family man and having fixed abode

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and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. Co-accused of the petitioner, namely Ankur Garg is also stated to have been granted bail by learned trial Court.

12. 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.

13. Accordingly, petitioner is ordered to be released on bail, in case 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.

14. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing 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

September 04, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No