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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38549-2023 (O&M)

Date of decision: 23.08.2023

Sukhdev Singh alias Tota

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Prince Sharma, Advocate for 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 an undertrial in a case bearing FIR No.73 dated 16.06.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Patti, Tehsil Patti, District Tarn Taran, Punjab.

2. Per prosecution case, on 16.06.2021, ASI Malkit Singh along with other police officials was going in a government vehicle on routine patrolling and checking. When they reached near Dana Mandi Sabhra, one person was seen coming on foot. On seeing the police party, he tried to flee but was apprehended on suspicion. He then took out a polythene carry bag from left pocket of his pants and threw it on the left side of the link road. On checking, 810 tablets, suspected to be contraband, were recovered from conscious possession of the petitioner after carrying out the necessary formalities. He was arrested from the spot. Later on, per FSL report it turned out to be 286.7 grams of narcotic Tramadol salt.

2.1 Petitioner was admitted on interim bail by learned trial Court vide order dated 28.07.2021 awaiting the FSL report. Meanwhile, he absented himself from the court proceedings and was eventually declared a proclaimed offender on 30.08.2022. Petitioner was again arrested on 19.09.2022 and is in custody ever since.

3 Learned counsel for the petitioner would argue that petitioner had no intention of evading Court process having once been granted bail vide order dated

28.07.2021 awaiting the FSL report. He submits that since the FSL report was awaited, owing to some miscommunication between his counsel, he remained under the impression that as and when report is submitted before the trial Court, he would be intimated of the same and it is thereafter that he would have to join proceedings as until then nothing material was happening before the trial Court.

3.1 Be that as it may, his unintentional absence before the trial Court was in the peculiar circumstances and the same led to his being declared as Proclaimed Offender without causing any fresh service or intimating him to cause appearance before the trial Court.

3.2 Learned counsel further contends that mandatory provisions of NDPS Act were not complied with in the present case. No independent witness was joined by the police party. Alleged recovery has been planted on him. Petitioner has thus been falsely implicated.

3.3. Learned counsel for the petitioner submits that in any case, alleged contraband recovered from the petitioner was weighed along with plastic bag and it is thus that the total weight is stated to be 286.7 grams, which too is marginally higher than non-commercial quantity. The commercial quantity of Tramadol salt starts from 250 grams and in this case, the weight of plastic bag is also included in 286.7 grams of weight. There is every chance that recovery may fall in non-commercial quantity.

3.4 He also 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.

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. 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. She further submits that petitioner was declared a proclaimed offender in this case and another case under Section 174-A IPC is pending against him and he is not on bail in that case.

4.1. In rebuttal, learned counsel for petitioner submits that vide order dated 16.11.2022 (Annexure P-4), learned trial Court granted bail to petitioner in case FIR under Section 174-A IPC, but petitioner could not furnish the bail bonds.

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 Inderjit Singh, submits that challan was filed and charges were framed on 07.12.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Out of nine prosecution witnesses, none has been examined so far. Commencement/conclusion of trial will take some time to conclude. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 11 months in preventive custody, he being in custody since 19.09.2022.

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. Having fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

9. Petitioner is stated to be sole breadwinner having elderly bedridden parents to look after, who are living in sheer penury in his absence. He has already lost his livelihood due to prolonged incarceration.

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.

(ARUN MONGA)
JUDGE

23.08.2023

vandana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No