CRM-M-39228-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

225 **CRM-M-39228-2023**

Date of decision: 17.08.2023

Banti ....Petitioner

V/s

State of Haryana ....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Satish Saini, Advocate for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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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.163 dated 02.06.2023, registered under Section 15(B) and 27-A (added later on) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, City Ratia, District Fatehabad.

2. Per FIR, on 02.06.2023, a police party headed by ASI Kuldeep Singh, on the basis of secret information, apprehended the petitioner who was found carrying 22 kgs of poppy husk contained in a plastic bag. Recovery was effected. During interrogation, petitioner disclosed that he had purchased the husk from co-accused Sanju for a sum of Rs.70,400/-. Recovery of Rs.3,000/- was also made from the said co-accused.Thus, Section 27-A of the NDPS Act was added.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He further submits that the alleged recovery was not made from the conscious possession of the petitioner but has been planted on him. He further submits that alleged recovered quantity does not fall within the category of commercial quantity and thus, rigors of Section 37 of the NDPS Act would not be attracted in this case. He further submits that Section 27-A of the NDPS Act is not attracted qua the petitioner as recovery of Rs.3,000/- was effected from co-accused. Further submits that petitioner is in custody since

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02.06.2023 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars. No other case is pending against him.

4. Per contra, learned State counsel, on instructions from ASI Krishan Kumar, opposes the bail petition. He submits that petitioner has committed a serious offenceand as such he is not entitled to concession of bail. He further submits that since Section 27-A of NDPS Act was added later on by the investigating agency, bar of Section 37 of NDPS Act would apply in the instant case.

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

6. Challan was presented on 28.07.2023 but charges have not been framed. Investigation is thuscomplete *qua* petitioner, he is not required for custodial interrogation.Bail allows an accused to maintain hisfreedom until his guilt or innocence is determined.Commencement/conclusion of the trial is likely to take quite sometimeas it is proceeding at a snail pace.Whereas petitioner has already beenlanguishing in jail for 2 months and 15 days in preventive custody, beingbehind bars since 02.06.2023.

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 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.

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

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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 stated to be 23-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 trialproceedings.

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 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 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.

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

(ARUN MONGA)
JUDGE

August 17, 2023
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

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