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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38958-2023 (O&M)
Date of decision: 31.08.2023

Kewal Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mr. J.K.Singla, Advocate for petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Status report dated 30.08.2023 by way of affidavit of Manjeet Singh, PPS, Deputy Superintendent of Police, Sub Division Budhlada, District Mansa in compliance of order dated 16.08.2023 has been tendered in course of hearing, which is taken on record.

2. After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.76 dated 10.10.2022, registered under Sections 22 (C), of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’) at Police Station, Sadar Budhlada, District Mansa.

3. Per FIR, on 10.10.2022, on routine duty, a police party spotted petitioner and co-accused Jasvir Kaur sitting on road side. Both were searching something in a plastic bag. Another lady named Sarabjit Kaur too was checking her purse. On suspicion, they were all apprehended. The Investigating Officer after following the procedure prescribed under Section 50 of the NDPS Act, caused search of the aforesaid persons. Prescription drugs viz. 3,000 tablets of Tramwel SR 100 (salt Tramadol) and 1,400 tablets of Alprasafe 0.5 (salt Alprazolam) kept in a plastic bag were recovered from possession of petitioner Kewal Singh and co-accused Jasvir Kaur. 400 tablets of Alprasafe 0.5 were recovered from the purse of co-accused Sarabjit Kaur. They were carrying the contraband without any permit/licence. They were arrested from the spot. Petitioner is in custody since 10.10.2022.

4. Learned counsel for the petitioner contends that alleged recovery has been planted on the petitioner. No recovery has been effected from the possession of the petitioner. Alleged recovery was effected from a the plastic bag in possession of co-accused Jasvir Kaur. Petitioner has no link with the alleged recovery. He further submits that mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the

police party. Petitioner is not involved in any other case. Petitioner has thus been falsely implicated in the present case.

4.1 He further argues that co-accused of the petitioner, namely, Jasvir Kaur has already been accorded concession of bail by this Court. Petitioner's case is better than co-accused Jasvir Kaur, who is on bail, and yet, petitioner continues to be in jail. He argues that on this ground alone, petitioner is entitled to be released on bail during pendency of trial.

4.2 Learned counsel 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.

5. On the other hand, learned State counsel opposes the bail petition. He 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. He however, admits that no other case is pending against him.

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

7. Learned State counsel, on instructions from ASI Jeet Singh, submits that challan was filed on 09.02.2023 and charges have also been framed. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Allegations against petitioner are matter of trial. Out of 12 prosecution witnesses, none has been examined. Commencement/conclusion of trial will take some time. 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 10 months being in custody since 10.10.2022.

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. 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. 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 a reasonable ground that petitioner maynot be guilty of the alleged offence. He is unlikely to commit any offence while on bail.
10. Petitioner is stated to be a young boy, aged 25 years and is on thecross-roads of his career and his future is getting severely jeopardized due toprolonged incarceration. Havingclean antecedents and fixed abode, it is unlikely that heposes any flight risk and/or will flee from trial proceedings.
11. Co-accused, has been granted concession of bail by this Court vide order 20.07.2023.
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, 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.
14. In case, petitioner is found 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.
15. 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.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

31.08.2023
vandana

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