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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38963-2023 (O&M)
Date of decision: September 04, 2023

Ram Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Munish Garg, Advocate for petitioner.

Mr. ShubhamKaushik, AAG 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.533 dated 25.11.2022, registered under Sections 15, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), Section 52-A of the Prisons Act, and Sections 201, 473 of the Indian Penal Code, 1860 (for short 'IPC'), at Police Station, City Barnala, District Barnala.

2. Per prosecution version, on 25.11.2022, on secret information, Inspector Baljit Singh, along with other police officials, was positioned near Sewak Dhaba on the Main Bathinda-Barnala road as part of their patrol and surveillance duties within the jurisdiction of City Barnala. Around 5:05 p.m., he received credible intelligence that the petitioner, along with Gurwinder Singh and their associates, who were known for their involvement in the illegal sale of poppy husk, were en route in a Baleno car with registration number PB-13-AR-7770, carrying a substantial quantity of contraband.

Relying on this information, Inspector Baljit Singh erected a barricade (nakabandi) and apprehended the petitioner and his co-accused, Gurwinder Singh, along with the Baleno car. On search of their vehicle, a total of 160 kilograms of poppy husk, divided into eight plastic bags weighing 20 kilograms each, was seized. Petitioner is in custody since then.

3. Learned counsel for the petitioner submits that petitioner is neither owner nor driver of the offending car, in which alleged contraband was recovered. He submits that nothing was recovered from conscious possession of the petitioner. He also submits that prosecution case is highly improbable as alleged 160 kg. of poppy husk cannot be fitted in the trunk of alleged

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passenger without any knowledge of the contents therein, and thus been falsely implicated in this case, is the contention.

3.1. Learned counsel further contends that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. Petitioner is not involved in any other case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He though admits that petitioner is not involved in any other case. He does not controvert that petitioner is neither owner nor driver of offending car and he was merely sitting as a co-passenger with the driver of the car.

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 Harbinder Singh, that challan was filed on 15.05.2023 and charges were framed on 19.08.2023. Investigation is thus complete and petitioner is thus not required for custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against the petitioner are matter of trial at this stage. On a Court query, learned State counsel, on instructions from ASI Harinder Singh, submits that out of total 20 witnesses, none has been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 9 months, being behind bars since 25.11.2022.

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. In any

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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 not likely to commit any offence while on bail.

10. Petitioner is stated to be a 22-year old person, merely a poor employee of the owner of car in question and was hired to do domestic chores and to help employer in his daily work. Being a family man and having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/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, 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.

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. 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