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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 04, 2023

Hasib Khan alias Hasib

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Inderjit Singh, Advocate for petitioner.

Mr. VikasBhardwaj, AAG Haryana.

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.699 dated 28.08.2021, registered under Sections 21C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Yamuna Nagar, District Yamuna Nagar.

2. Per prosecution version, on secret information, on 28.08.2021, Sahil *alias* Chuha, co-accused of the petitioner was intercepted by the police party and 300 grams of smack was recovered from his conscious possession. During investigation, co-accused Sahil suffered disclosure statement and named Mohammad Ishan as source of contraband. Accordingly, Mohammad Ishan was arrested on 13.07.2022. Mohammad Ishan, in turn, suffered disclosure statement naming petitioner as main source of contraband. Petitioner was then arrested on 28.03.2023 and is in custody since then.

3. Learned counsel for the petitioner submits that FIR in question was registered on 28.08.2021 and disclosure statement of co-accused was recorded almost a year later i.e. on 13.07.2022. At that time, petitioner was though in custody in another case, but notwithstanding, petitioner was not taken into custody for questioning in the present case till 28.03.2023. Same shows his false implication. He further submits that except disclosure statement of co-accused, there is nothing on record to show complicity

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of the petitioner with the alleged offence. Petitioner has thus been falsely implicated in this case.

3.2. Learned counsel for the petitioner urges that petitioner is a poor labourer. No recovery has been effected from him. Merely on the basis of disclosure statement, being an easy target, one after the other cases are being registered against him to make him a scapegoat to show that all those cases stand solved. There is neither any direct or indirect or even link evidence to connect him with the alleged recovery in question in the present case.

3.3. Learned counsel further contends 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.

3.4. Learned counsel also submits that co-accused of the petitioner, namely Mohammad Ishan, on whose disclosure statement, petitioner was implicated in this case, has already been granted concession of bail vide order dated 28.02.2023 (Annexure P-3) passed in CRM-M-33937-2022 by a co-ordinate Bench of this Court.

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 does not controvert the factum of grant of bail to co-accused. He submits that petitioner is involved in three more cases.

4.1. On the contrary, learned counsel for petitioner submits that petitioner is on bail in all those cases.

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

6. Challan *qua* petitioner was submitted on 19.05.2023 and charges were framed on 27.07.2023. Investigation is thus complete and he is not required for custodial interrogation.

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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 SI Surender Kumar, submits that out of total 23 witnesses, only two have 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 about 5 months, being behind bars since 28.03.2023.

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 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 family man and having fixed abode. It is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

11. Co-accused, on whose custodial statement petitioner was arrested has been granted bail.

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.

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14. 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.
15. 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.
16. 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