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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40502-2023 (O&M)

Date of decision: August 23, 2023

Phuman Singh

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Ms. Shaveta Sanghi, Advocate for
Mr. Aditya Sanghi, Advocate for petitioner.

Mr. Karan Garg, 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.410 dated 12.09.2020, registered under Sections 21(b)/ 21(c)/ 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Rania, District Sirsa.

2. Per prosecution version, on 12.09.2020, a patrolling party, on routine duty, headed by SI Jagdish Kumar, on suspicion, apprehended the petitioner and his wife-Hajinder Kaur (co-accused). 1000 prohibited intoxicant capsules PARVORIN SPAS TRAMADOL HYDROCHLORIDE MAKE RIDLEY (weighing 639 grams), were recovered from them. They were carrying it without any permit or license. Petitioner is in custody since then.

3. At the outset, learned counsel for petitioner contends that co-accused Harjinder Kaur @ Jinder has already been granted concession of bail more than a year ago, vide order dated 17.05.2022 (Annexure P-3) passed in CRM-M-1253-2021 by a co-ordinate Bench of this Court. She further contends that role attributed to the petitioner is similar to that of co-accused.

3.1. Learned counsel for petitioner submits petitioner is not involved in any other case. 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

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3.2. Learned counsel for petitioner submits that although Section 27-A of NDPS Act has been invoked in the FIR, but subsequently, no charge was made out *qua* said offence at the time of framing of charges and in any case, no money was ever recovered so as to make any of the accused culpable *qua* said Section.

4. On the other hand, learned State counsel, on instructions from SI Satish Kumar, 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 also does not controvert that co-accused has already been granted bail by a co-ordinate Bench of this Court. He points out that though head note of the bail petition has mentioned Section 27-A of NDPS Act, but said Section was never invoked while registering the FIR and it is Section 22(b) and not Section 27-A of NDPS Act.

5. Confronted, learned counsel for petitioner states that there seems to be some inadvertent error in mentioning of the relevant sections while drafting bail petition.

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

7. On a Court query, learned State counsel informs that challan has been filed, and charges were framed on 12.09.2022. Investigation is thus complete and he is not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of total 15 witnesses, none has been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been languishing in jail for the last almost 3, being behind bars since 12.09.2020.

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

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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 37-year old person and co-accused, who is on bail, is his wife. Being a family man and having fixed abode with 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. 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.

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

(ARUN MONGA)
JUDGE

August 23, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No