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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 12.09.2023

Amandeep Singh alias Vicky

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. Shubham Kaushik, 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.212 dated 13.09.2022, registered under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Special Task Force, STF Wing, District SAS Nagar (Mohali).

2. Per FIR, on 13.09.2022, a secret information was received by police that petitioner was indulging in smuggling of Heroin and was waiting for his prospective customer(s) at Dhillon Petrol Pump, near market bypass Amritsar. Basis thereof, SI Baljinder Singh along with other police officials reached the Petrol Pump and apprehended the petitioner. On checking, 740 grams of Heroin was recovered from the polythene envelop which the petitioner had tied with his waist with the help of a yellow cloth. Same was sealed and seized after adopting the due procedure. Petitioner was arrested from the spot.

3. Learned counsel for the petitioner contends that as per the offer given, Deputy Superintendent of Police could have given petitioner an option upon his arrival either to be searched by a Magistrate or an independent Gazetted officer and he could not have included himself in the said offer, as has been done in the present case. He further urges that the Gazetted Officer of the investigating team being included in the offer amounts to a third offer other than the one envisaged

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under Section 50 (2) of the NDPS Act and non-compliance of the same vitiates the entire trial. Relies upon decision of the Supreme Court in case titled *State of Rajasthan vs. Parmanand and another*¹, in support of his contentions.

3.1 Learned counsel further submits that there is violation of Section 42 of NDPS Act as the secret information was not reduced into writing and was never conveyed to higher police official. Further submits that provisions of Section 42 of the NDPS Act are mandatory and there should be strict compliance of the same. No independent witness was joined at the time of alleged recovery. From the allegations levelled in the FIR, no case is made out against the petitioner and the story put forth by the prosecution is just to falsely implicate the petitioner. Learned counsel further submits that whole prosecution story hinges upon the testimony of official witnesses which makes the prosecution story highly doubtful. He further submits that there is no compliance of Section 50 of the NDPS Act in the present case. Further argues that petitioner is in custody since 13.09.2022 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 opposes the bail petition. He submits that petitioner has committed a serious offence and as such he is not entitled to concession of bail. He further submits that alleged recovered quantity falls within the category of commercial quantity and thus, rigors of Section 37 of the NDPS Act would be attracted in this case.

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 Suram Singh, submits that challan was presented on 02.02.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation.

¹2014(3) SCR 522

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Commencement/conclusion of the trial is likely to take quite sometime as it is proceeding at a snail pace. Charges were framed on 03.03.2023. There are 11 prosecution witnesses and none has been examined till date. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for about 01 year in preventive custody, being behind bars since 13.09.2022.

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 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 30-year old unmarried person, having a family comprising of his widowed mother, who is totally dependent on him. His continued incarceration may jeopardize his career prospects and he may also be rendered jobless forever. Being a family man and having clean antecedents, it is unlikely that he is flight risk and/or will flee from the trial proceedings.

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.

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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

September 12, 2023
Ajay

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