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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: August 24, 2023

Vinay @ Rahul

....Petitioner

versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Harvinder Singh Maan, Advocate,  
Mr. Gaganpreet Singh Aujla, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

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**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.191 dated 27.12.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sadar Patiala, District Patiala.

2. Per prosecution version, on 27.12.2022, a Police party headed by ASI Bhupinder Singh were on duty near marriage palace, Ghalaury, where two persons came on a motorcycle having a backpack with them. They were apprehended on the basis of suspicion of having some intoxicant substance in their possession. ASI Bhupinder Singh informed the Moharrir Head Constable (MHC) of Police Station for sending competent Investigating officer at the spot, whereupon SI Karnail Singh along with police party reached at the spot. On enquiry, accused disclosed their names as Vinay alias Rahul (petitioner) and Gurpreet Singh. After disclosing his identity, place of posting and designation, SI Karnail Singh showed his intention to conduct search. The accused were also apprised about their legal right to get the search effected in presence of a Gazetted officer or a Magistrate to which accused reposed faith upon SI Karnail Singh. Thereafter, due procedure was adopted, search of the bag, which was thrown by accused on the road, was conducted from which 32 intoxicant bottles make Codeine Phosphate @

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police possession by converting them into a parcel. An FIR was registered in this regard.

Both the accused were arrested.

3. Learned counsel for the petitioner submits that despite availability, independent witnesses were not joined by the police party. He further contends that when police party was travelling in a private vehicle, therefore, there would be no excuse for them to not produce the petitioner before a gazetted officer or a Magistrate. Also contends that no sampling of intoxicant tablets stated to have been recovered from the petitioner, was done before a Magistrate, therefore, there is violation of Section 52(A) of the Act. Learned counsel further submits that petitioner has thus been falsely implicated in this case. Petitioner was not in conscious possession of the alleged contraband, but the same was recovered from co-accused.

3.1. Learned counsel for petitioner further submits that 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 of petitioner tampering with evidence and/or influencing prosecution witnesses.

4. On the other hand, learned State counsel, on instructions from ASI Lakhwinder Singh, 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.

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 informs that challan has already been filed, and charges were framed on 07.07.2023. 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

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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 8 months, being behind bars since 27.12.2022.

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 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.

8. 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.

9. Petitioner is stated to be a 25-year old unmarried person and got younger brother and sister who are students and his family is dependent on his income as his father is a Beldar. 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.

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.

11. 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.

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.

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13. 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.

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

(ARUN MONGA)  
JUDGE

August 24, 2023  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No