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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41653-2023 (O&M)

Date of decision: 28.08.2023

Ravi @ Tond

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. V.B.Godara, 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.191dated 16.04.2023, registered under Section 18of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, City Jind, District Jind.

2. Per prosecution version, on 16.04.2023, SI Nafe Singh was on night patrolling duty along with his colleagues.They were checking the vehicles. One Verna car, without having any registration plate, was seen coming. Police party signaled to stop then the driver of the vehicle, but he tried to flee. The vehicle was intercepted due to the barricade. Petitioner was on the driver's seat. He was apprehended with 210 grams opium in his conscious possession.Petitioner was arrested on the spot on 16.04.2023 and is in custody ever since.

3. Learned counsel contends that petitioner has no concern with the alleged FIR. He submits thatmandatory provisions of NDPS Act were not complied with in the present case. No independent witness was joined by the police party. Entire process of recovery, arrest and even sending petitioner in custody was wrong and illegal, without following the proper procedure. Petitioner has thus been falsely implicated. Petitioner is not involved in any other case. The said quantity of opium was not for sale but falls in the category of intermediate quantity and if at all, meant for personal medicinal purposes.

3.1. He also submits 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.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He however, admits that no other case is pending against him, per custody certificate.

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 Reena, submits that challan was filed on 05.06.2023. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Next date before the learned trial Court is 02.09.2023. Commencement/conclusion of trial will take some 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 in jail for the last more than 04 months, being in custody since 16.04.2023.

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. 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.

9. Petitioner is stated to be 27-year old family person having wife and one minor child who are living in sheer penury in his absence. He is only breadwinner of his family. He has already lost his livelihood due to prolonged incarceration. Having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from 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, if 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.

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

28.08.2023
vandana

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