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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-41607-2023 (O&M)

Date of decision: October 19, 2023

Veer Singh @ Veeru

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Balbir Kumar Saini, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

ARUN MONGA, J. (ORAL)

This is third foray of the petitioner seeking his release as an undertrial in a case bearing FIR No.0015 dated February 22, 2022, registered under Sections 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Sadar, Police Station in Moga. Earlier two petitions were dismissed as withdrawn vide orders dated December 15, 2022 (Annexure P-13) passed in CRM-M-51019-2022 and dated March 27, 2023 (Annexure P-14) passed in CRM-M-14522-2023.

2. According to the prosecution's account, on February 22, 2022, secret information was received indicating that Veer Singh, also known as Veeru (the petitioner), was involved in the business of selling intoxicant tablets. He was described as wearing a black shirt, jeans, and a khaki jacket. It was believed that a raid could lead to his apprehension along with a significant quantity of intoxicant tablets.

2.1. Following proper procedure, a raid was conducted, and the petitioner was found in possession of a white polythene envelope containing 100 strips of Tramadol Prolonged-released Tablets IP (100 mg), Tramatrust SR 100, with each strip containing 10 tablets (totaling 1000 tablets). The petitioner was apprehended on the spot and has been in custody since then.

3. Firstly, the learned counsel for the petitioner contends that the petitioner was not present at the alleged place of occurrence and was taken from his house by the

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police. He also argues that the FIR and the FSL (Forensic Science Laboratory) report do not mention the batch number, date of manufacturing, or the date of expiry of the alleged recovered contraband. Moreover, according to the FSL report, the sample was received on February 24, 2022, which is after a delay of 2 days from the registration of the FIR. There is also non-compliance with the mandatory provisions of the NDPS Act. There is insufficient evidence to connect the petitioner with the alleged offense, suggesting that the chances of the petitioner's conviction are weak.

3.1. Additionally, the learned counsel emphasizes that no incriminating items were found in the petitioner's immediate possession, indicating that the petitioner may have been wrongfully detained in this case.

3.2. Finally, the learned counsel affirms that further custodial interrogation is unnecessary, as there is nothing more to be recovered from the petitioner, and there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition, arguing that the petitioner has committed a serious offense. If the petitioner is granted bail, there are chances of his fleeing from trial proceedings. He further submits that according to the FSL report, the alleged recovered quantity would fall within the category of commercial quantity, and the stringent provisions of Section 37 of the NDPS Act would be attracted in this case. He further submits that petitioner is involved in five other cases.

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

6. In response to a query from the Court, under instructions from police official, learned State counsel submits that challan has already been filed and charges were framed on July 30, 2022. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of twenty one witnesses, none has been examined so far. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In

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contrast, the petitioner has been in detention since February 22, 2022, for more than 01 year and 07 months.

8. The investigation regarding the petitioner is over, but he is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report concerning the contraband, which has already been filed in the Court below and is inaccessible to the accused. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

9. Be that as it may, the offense allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. 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. The petitioner is stated to be a 36-year-old. He has added responsibilities of looking after his old aged parents who are suffering from various diseases. Being a family man and having fixed abode, it is unlikely that he is a flight risk 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 by keeping the petitioner in further preventive custody.

12. Accordingly, the petitioner is ordered to be released on bail, if not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the Ld. trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

13. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.

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14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.
15. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 19, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No