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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 04, 2023

Kashmir Singh @ Kaku

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sanjeev K. Virk, Advocate for petitioner.

Mr. Mohit Thakur, 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.92 dated 05.05.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, SadarKapurthala, District Kapurthala.

2. According to the prosecution's account, on 05.05.2021, ASI Jaswinder Singh, along with other police officers, was present at the Madhojhanda Bus Stop conducting a search of suspicious individuals and vehicles. During this operation, they observed a young Hindu man approaching the area on foot from the Madhojhanda side. Upon seeing the police party, the individual discarded a polythene bag he was carrying in his hand and hastily fled towards the nearby fields. Based on suspicion, the petitioner was apprehended by ASI Jaswinder Singh with the assistance of other police personnel. The petitioner identified himself as Kashmir Singh, also known as Kaku. Subsequent inspection of the discarded polythene bag revealed two parcels. The first parcel contained 70 unlabeled intoxicant tablets, and the second parcel contained 50 grams of intoxicant powder. According to the FSL (Forensic Science Laboratory) report, the 70 loose tablets were found to contain 11.130 grams of Etizolam, which is considered a commercial quantity of the substance. However, the 50 grams of intoxicant powder contained a substance identified as Chlorzoxazone, which was determined not to be a contraband substance under the NDPS Act. Petitioner was thus arrested on the spot on 05.05.2021 but was later granted concession of interim bail vide order dated 05.07.2021 awaiting FSL report, which was cancelled vide order dated 23.10.2021 on receipt of the report. He was thus again taken in custody.

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3. Learned counsel for the petitioner submits that there was non-compliance of provisions of Section 50 of NDPS Act as no independent witness was joined at the time of alleged recovery. Learned counsel states that alleged 70 tablets of Etizolam were recovered which is a prescription medicine used for disorder of anxiety and depression. Further states that other substance alleged recovered is 50 grams of Chlorzoxazone which is not a psychotropic substance. Petitioner has thus been falsely implicated in this case. In any case, nothing was recovered from the conscious possession of petitioner.

3.1. Learned counsel further contends that 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. Petitioner is not involved in any other case.

4. On the other hand, learned State counsel 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. Challan has already been filed and charges are also framed. Investigation is thus complete and petitioner is not required for custodial interrogation.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against the petitioner are matter of trial at this stage. On a Court query, learned State counsel, on instructions from ASI Jaswinder Singh, submits that out of total 08 witnesses, 06 have been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has remained in jail for the more than 02 years, being behind bars since 23.10.2021 and prior to that, remained under incarceration from 05.05.2021 to 05.07.2021.

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

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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 31-year old family man and having fixed abode and 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. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing 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

September 04, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No