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

**CRM-M-43359 OF 2023 (O&M)
DATE OF DECISION: 06.09.2023**

Jaswinder Singh @ Jassi**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Ms. Ravisha Mahajan, 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.14 dated 22.01.2023, registered under Sections 22 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Sadar Jagraon, District Ludhiana.

2. Per prosecution case, on 22.01.2023, ASI Balwinder Singh along with other police officials was on routine patrolling duty in a government vehicle deputed near village Ramgarh Bhullar, Jagraon. On secret information they got to know that petitioner Jaswinder Singh @ Jassi was into the business of selling contraband pills in nearby villages. Finding the information reliable, *ruqa* was sent to police station for preparing report under Section 42 of NDPS Act. After registration of FIR, an Investigating Officer was sought to be appointed.

2.1 On receipt of aforesaid *ruqa*, ASI Angrej Singh was appointed as Investigating Officer, who reached the spot and barricade was erected. After sometime, one young boy was seen coming on motorcycle. He was signaled to stop by pointing the torchlight. He instead tried to flee, but was apprehended at the spot. Notice under Section 50 of NDPS Act was served. After taking his consent, personal search was conducted. Nine boxes of contraband pills, namely, Tramadol Hydrochloride 100 mg each, Trakem 100 tablets, total 1800 in number were recovered from carry bag/envelope tied with the motorcycle. Petitioner was arrested from the

3. Learned counsel for the petitioner argues that entire recovery has been planted on the petitioner, as is borne out from challan where the petitioner is stated to have been arrested from the spot for carrying 1800 tablets as aforesaid, but there is no mention of same in the FIR. In support of her arguments, she refers to contents of FIR (Annexure P/1) vis-à-vis those of challan (Annexure P-2).

3.1 Learned counsel further contends that mandatory provisions of NDPS Act were not complied with. She further urges that no independent witness was joined by the police party. Petitioner has thus been falsely implicated in the present case. It is further contended that he is not involved in any other case.

3.2 Learned counsel also submits that nothing is to be recovered now from the petitioner and he is not required for further custodial interrogation since challan has already been presented. 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 in case petitioner is granted concession of bail, there are chances of his fleeing from justice. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of 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. Learned State counsel, on instructions from ASI Gursewak Singh, submits that challan was presented on 09.05.2023. Investigation *qua* the petitioner is complete and thus he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Out of 09 prosecution witnesses, none has been examined so far. Commencement/conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for more than 07 months, being in custody since 22.01.2023.

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.

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 maynot be guilty of the alleged offence. He is unlikely to commit any offence while on bail.

9. Petitioner is stated to be a 28-year oldfamily person. He is sole breadwinner and his family members are living in sheer penury in his absence. Being a family person and fixed abode, it is unlikely that he is flight risk 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, 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.

SEPTEMBER 06, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No