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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43229-2023 (O&M)

Date of decision: September 05, 2023

Santosh Sahni

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Lakshay Bector, Advocate for 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.137 dated 23.08.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Punjab Agriculture University (P.A.U.), District Ludhiana.

2. Per prosecution version, on 23.08.2022 at about 4:20 p.m., when police party headed by L/SI Manju was on duty at a *naka* (barricade) at Altos Chowk (Rotary), Hambarha Road, Ludhiana, and carrying out routine checking of suspicious persons, all the three accused, namely Vinod Sahni, Abodh Singh and Santosh Sahni (petitioner) were intercepted while riding on an Activa Scooter. However, they tried turning around to flee, but were apprehended. 300 intoxicant tablets each, total 900 intoxicant tablets (Tramadol Hydrochloride, total weight 279.9 grams) were recovered from the packets, which they had thrown on the ground on seeing the police party. All three accused are brothers. All of them were taken in custody on the spot. An FIR was thus registered.

3. Learned counsel for the petitioner submits that there is violation of Section 50 of NDPS Act as no gazetted officer or Magistrate was even attempted to have been joined at the time of alleged recovery. No independent witness was joined at such a busy public place, which makes prosecution story doubtful.

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3.1. He further contends that mandatory provisions of NDPS Act were not complied with by the investigating agency in a proper manner. Alleged recovered contraband was non-commercial in nature. In any case, alleged recovery of contraband is a planted one. Alleged recovery was not from the conscious possession of the petitioner. Petitioner has thus been falsely implicated in this case.

3.2. Learned counsel further contends that nothing is to be recovered now 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.

3.3. Learned counsel for the petitioner also contends that co-accused of the petitioner, namely Abodh Singh was granted bail vide order dated 16.02.2023 (Annexure P-4) passed in CRM-M-58614-2022, and another co-accused, namely Vinod Sahni was also granted bail vide order dated 12.05.2023 (Annexure P-5) passed in CRM-M-10811-2023, by co-ordinate Bench of this Court.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. 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 there is no other case against the petitioner.

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

6. Challan was filed and charges were framed on 16.11.2022. Investigation is complete and petitioner is thus 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 Dimple, submits that out of total 13 witnesses, none has been examined so far. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been languishing in jail for the last more than 01 year, being behind bars since 23.08.2022.

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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 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.

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 27-year old young person having wife and 03 minor children, who are living in sheer penury in his absence. He has also added responsibilities of his old age parents who are totally dependent on him. Being a 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. Co-accused of the petitioner have also been granted concession of bail by co-ordinate Bench of this Court.

12. 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.

13. 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.

14. 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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15. 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.
16. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 05, 2023
mahavir

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No