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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50069-2021 (O&M)

Date of decision: July 17, 2023

Jaheer Alam @ Khan

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Sumeet Goel, Senior Advocate with
 Mr. Yashpal Thakur, Advocate,
 Mr. Shivam Kaushik, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.121 dated 20.09.2021, registered under Section 22C/61/ 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Khamanon, District Fatehgarh Sahib, Punjab.

2. Per prosecution version, on 20.09.2021 petitioner was apprehended by the police on the basis of secret information in/around the area of T-point, G.T. Road, Khamano Khurd. During his search three transparent polythene bags were recovered, one polythene bag contained 430 injections Buprenorphine IP 2 ml each and from another polythene bag, 430 bottles of Avil of 10 ml each were found, without any permit or licence. Petitioner was also found in possession of currency notes of Rs.3,50,000/-. Petitioner is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that alleged money recovered from the petitioner was his hard earned money which he had received from the sale of his land and his ancestral land sold on 20-21/09.2021. Petitioner is also not physically well as he suffered paralysis attack few days ago, after his arrest. He submits that alleged contraband is a prescription medicine. Buprenorphine is not even mentioned in schedule-1 attached with NDPS Act,

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which defines psychotropic substances, and the same does not fall in the definition of psychotropic. No recovery was affected from the petitioner. He also submits that there is no compliance of Sections 42 and 50 of NDPS Act, as neither gazetted officer nor Magistrate was present on the spot, complainant and Investigating Officer are same. He also submits that there is no other case against the petitioner.

4. On the other hand, learned State counsel, on instructions from ASI Karamjeet opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of him tampering with evidence and/ or influencing witnesses. There are two other cases against the petitioner, in which production warrants have been examined against him.

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

6. Instant is a case of alleged recovery of prescription medicine from the petitioner without carrying requisite permit or licence *qua* the same. Petitioner though contends that no such recovery was made from him and it has been planted on him. Be that as it may, same shall be adjudicated by the Court below after conclusion of trial. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Challan is stated to have been filed and even charges were framed and trial has commenced, petitioner is not required for custodial interrogation. Out of total 20 witnesses, only 3 have been examined so far.

6.1. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for about 1 year and 9 months in preventive custody, being behind bars from 20.09.2021. On the other hand, 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

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all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

7. Learned Senior counsel also points out that petitioner is 41-year old only bread winner of the family and has wife and two minor children and old aged father, who are totally dependent on him and in his absence, his entire family is living in sheer penury.

8. 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.

9. Accordingly, petitioner is ordered to be released on bail 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.

10. 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.

11. 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.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No