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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 10, 2023

Balwinder Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amit Sharma, Advocate for petitioner.

Mr. Mohit Sharma, AAG Punjab.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.237 dated 19.10.2022, registered under Sections 15, 18, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Sadar Samana, Police Station in Patiala.

2. According to the prosecution's account, on October 19, 2022, SI Gagandeep Sidhu, accompanied by other police officials, was present in Talwandi Malik village. At approximately 3:00 p.m., SI Sidhu received confidential information that Rajinder Singh and Balwinder Singh (the petitioner) were transporting a significant quantity of poppy husk concealed beneath seed bags in a Canter bearing registration number HR-57A-1156, brand Eicher, colored red, originating from Samana. They set up a barricade (naka) and apprehended the petitioner along with his co-accused. Subsequently, 10 quintals of poppy husk were recovered from the aforementioned Canter. The petitioner has been in custody since October 19, 2022.

3. The petitioner's counsel argues that the petitioner is an indigent individual who was employed as a cleaner-cum-conductor by the truck's driver and owner, Rajinder Singh. His role primarily involved vehicle maintenance and daily cleaning, for which he received a modest salary. He asserts that the petitioner had no means of knowing or

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arranging for the contraband alleged to have been found in the truck. Furthermore, the driver/owner informed him that the bags loaded in the truck contained seeds for transportation, and he was unaware that concealed among these seed bags were bags allegedly containing poppy husk. The petitioner lacked the resources to ascertain the contents of the bags hidden beneath the seed bags.

3.1. Additionally, the counsel emphasizes that nothing incriminating was found in the petitioner's conscious possession, implying that the petitioner has been wrongfully accused in this case. The petitioner has no involvement in any other legal matters.

3.3. Finally, the counsel contends that nothing needs to be recovered from the petitioner, and there is no need for further custodial interrogation. 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 him fleeing from trial proceedings. He submits that the recovery of contraband falls within the ambit of a commercial quantity, and the rigors of Section 37 of the NDPS Act would be attracted in this case. However, he admits that no other case is pending against him.

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 ASI Sarabjit Singh, learned State counsel submits that after filing the challan, charges were framed on May 26, 2023. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation. Of the twenty two prosecution witnesses, only one has already been examined so far.

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. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since October 19, 2022, for more than 11½ months.

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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 58-year-old family person. Having fixed abode and a person with a clean record, 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.

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 10, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No