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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 10, 2023

Mahesh Kumar @ Mashi

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. V.B. Godara, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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.153 dated 11.04.2023, registered under Sections 20, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Police Station Kurukshetra University, District Kurukshetra.

2. According to the prosecution's account, on April 11, 2023, SI Balbir Singh received secret information around 6:10 p.m. The information indicated that a boy named Mahesh Kumar, also known as Maishi (the petitioner), wearing a red shirt, gray jeans, and white shoes, was seen in the park near VVIP Ghat Brahamsarover attempting to sell Charas (Sulpha) to *Babas/Sadhus*. Believing the information to be credible, SI Balbir Singh shared it with other police officials. A separate notice under Section 42 of the NDPS Act was prepared and sent to Sh. Subhash Chander, DSP Hq, Kurukshetra, through HC Parveen Kumar. A written notification was also sent to the Police Station Kurukshetra University Kurukshetra, requesting the registration of a case and the appointment of another investigating officer.

2.1. Subsequently, PSI Jasbir Singh conducted further investigation and arrived at the scene at 7:20 p.m. He introduced himself to the petitioner and expressed his suspicion regarding the possession of a narcotic substance. Following this, a consent notice under Section 50 of the NDPS Act was prepared separately, and the petitioner agreed to a search conducted by a gazette officer. Around 8:00 p.m., Sh. Ram Dutt, DSP Kurukshetra, and his

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staff arrived at the scene. After completing the necessary formalities, a search of the petitioner was carried out, and 1 kilo 964 grams of charas (Sulpha) were found in his black bag, labeled "Hi-Speed." The petitioner was arrested on the spot and has been in custody since April 11, 2023. The petitioner also made a disclosure statement that the contraband had been supplied to him by one Ramesh Kumar, alias Meshi.

3. Foremost, the petitioner's learned counsel points out that the petitioner's co-accused, Ramesh Kumar, alias Meshi, had already been granted bail by this Court through an order dated July 19, 2023, in CRM-M-31676-2023.

3.1. Furthermore, the petitioner's counsel contends that the petitioner has no connection with the alleged offense. Upon reviewing the FIR in question, it is argued that no case is substantiated against the petitioner. There are alleged violations of mandatory provisions of the NDPS Act, such as the absence of an independent witness. The petitioner claims that the alleged recovery was fabricated, and there are concerns about potential mistreatment by the police.

3.2. The petitioner's counsel also emphasizes that no independent witness was present at the time of the alleged recovery, suggesting that the petitioner has been falsely implicated in the present case. The petitioner has no involvement in any other case.

3.3. Finally, the counsel submits that nothing incriminating was found on the petitioner, and there is no need for further custodial interrogation. There are no indications 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 Ashok Kumar, learned State counsel submits that after filing the challan, charges were framed on

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22.09.2023. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation. Of 14 prosecution witness, none has 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 April 11, 2023, for more than 05 months.

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 25-year-old 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. Co-accused of the petitioner has already been granted concession of bail by this Court, as aforesaid.

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 by keeping the petitioner in further preventive custody.

13. 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

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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.

14. 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.

15. 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.

16. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 10, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No