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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43822-2023 (O&M)

Date of decision: 11.09.2023

Gurpreet Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Inderpreet Singh Kooner, Advocate,
For the petitioner.

Mr. Mohit Thakur, 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.191 dated 27.12.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act 1985 (for short NDPS Act'), at Police Station, Sadar Patiala, District Patiala.

2. Per prosecution version, on 27.12.2022, a Police party headed by ASI Bhupinder Singh, were on duty near marriage palace, Ghalaure, where two persons came on a motorcycle carrying a backpack. They threw the backpack on the road, but were apprehended on the basis of suspicion of having some intoxicant substance in their possession. ASI Bhupinder Singh informed the Moharrir Head Constable (MHC) of Police Station for sending competent Investigating officer at the spot. SI Karnail Singh along with a police party reached the spot. On enquiry, accused disclosed their names as Vinay alias Rahul (co-accused) and Gurpreet Singh (petitioner). After disclosing his identity, place of posting and designation, SI Karnail Singh conveyed his intent to conduct their search. The accused were also apprised about their legal right to get their search effected in presence of a Gazetted officer or a Magistrate. However, they accused reposed faith in SI Karnail Singh. Due procedure was then adopted. Search of the bag led to recovery of 32 intoxicant bottles of Codeine Phosphate @ Chlorpheniramine Maleate Syrup DALSIN- CD+. Same were taken into police possession by making a parcel. An FIR was registered. Both the accused were thus arrested.

3. Learned counsel for the petitioner submits that mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioner has thus been falsely implicated in the present case.

3.1. Learned counsel also submits that nothing is to be recovered now from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

3.2 Learned counsel for the petitioner submits that co-accused namely, Vinay @ Rahul has already been granted concession of bail by this Court vide order dated 24.08.2023 (Annexure P-2) in CRM-M-40811-2023.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. 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. He submits that another case under Sections 279, 304-A of IPC is pending against him, however, he is on bail in that matter.

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 Manjit Singh, submits that challan *qua* petitioner was filed on 19.05.2023 and charges were framed on 07.07.2023. Out of 15 prosecution witnesses, none has been examined so far. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. 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 08 months, being in custody since 27.12.2022.

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.

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 may not be guilty of the alleged offence. He is unlikely to

commit any offence while on bail.

9. Co-accused has already been granted concession of bail by this Court to whom same role has been attributed as that of the petitioner.
10. Petitioner is stated to be a 27-year old unmarried person. He is an agriculturist by profession and sole breadwinner of his family 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.
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 to keep the petitioner in further preventive custody.
12. 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.
13. 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.
14. 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.
15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

11.09.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No