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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-44164-2023 (O&M)

Date of decision: September 13, 2023

Vivek Kumar @ Sahil

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vishal Sharda, Advocatefor petitioner.

Mr. ShubhamKaushik, 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.198 dated 13.08.2022, registered under Section22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station,Gobindgarh Mandi, District Fatehgarh Sahib.

2. Per FIR, SI Satwinder Singh along with other police officials was on routine patrolling in a government vehicle. When they reached near Super Milk Plant, Mandi Gobindgarh, one motorcycle Hero Honda Splender on which three persons were riding, on seeing the police party tried to turn around and flee. They were apprehended. Person riding the motorcycle disclosed his name as Vivek Kumar @ Sahil (petitioner). He was carrying one bag (violet in colour) on his shoulder. Middle pillion rider disclosed his name as Shivam, who too was having one blue coloured bag on his shoulder. Other pillion rider disclosed his name as Shanant, who also had a carry bag in his right hand. Shivam was found in conscious possession of 90 intoxicant injections Buprenorphine 2 ML each and 90 vials of Avil 10 ML each and co-accused Shanant was found in conscious possession of 8 intoxicant injections Buprenorphine 2 ML each make Leegestic and 8 vials of Avil 10 ML each, while petitioner was found in possession of 90 intoxicant injections Buprenorphine 2 ML each and 90 vials of Avil 10 ML each. Hence, total recovery of 188 intoxicant injections Buprenorphine each having 2 ML and 188 vials of Avil 10 ML each were recovered from all of them, without any valid license or permit. Petitioner is in custody in this case since13.08.2022.

3. Learned counsel for petitioner contends that there is no compliance of mandatory provisions of Section 50 of NDPS Act. The alleged recovery is planted upon the petitioner. Nothing was recovered from conscious possession of the petitioner. Petitioner has thus, been falsely implicated in this case.

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

3.3 Learned counsel also contends that co-accused of the petitioner, namely Shanant and Shivam have been granted concession of bail vide order dated 31.05.2023 (Annexure P-4) passed in CRM-M-751-2023 and vide order dated 16.08.2023 (Annexure P-5) passed in CRM-M-31392-2023, respectively, but petitioner continues to languish in jail.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is every likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. He further submits that petitioner is also required on production warrants in two other cases; one under Sections 406, 420 IPC and the other under Sections 21 and 22 of NDPS Act.

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

6. Challan has already been filed and charges were framed on 22.03.2023. On a Court query, learned State counsel, on instructions from SI Satwinder Singh, submits that out of total 23 witnesses, only 01 has been examined so far. Investigation *qua* petitioner is thus complete and petitioner is 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. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has remained in jail for the past 01 year and 1 month, being behind bars since 13.08.2022.

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

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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 26-year old. Having fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

11. Co-accused of the petitioner have already been granted concession of bail by this Court. Role attributed to petitioner is akin to the said co-accused and the same is not controverted.

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.

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 13, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No