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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 15, 2023

Malkeet Singh alias Peek

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sukhwinder S. Dhillon, Advocate for petitioner.

Mr. Shubham Kaushik, 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.300 dated 28.12.2022, registered under Sections 22(c), 27, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Lambi, District Sri Muktsar Sahib.

2. Per First Information Report (FIR), on 28.12.2022, ASI Sukhmander Singh along with other police officials were on duty at canal bridge mandi Killianwali and were checking suspicious persons/vehicles in routine. Two persons, holding black polythene in their hands, on seeing police check post, panicked and tried to flee. Upon suspicion, ASI Sukhmander apprehended them with the help of other officials and asked their names. First person told his name as Malkeet Singh (petitioner) and second one told his name as Kaur Singh alias Balwant Singh. When asked, they both told that they were having intoxicant tablets and due to fear of being caught, they tried to turned back.

2.1. Meanwhile, ASI Jagdish Singh along with officials reached at the spot on Government Scorpio vehicle. ASI Jagdish Singh tried to join independent witnesses, but no one was ready to join. Then ASI Jagdish Singh told his identity to the accused person and told them that he needs to search them and also apprised them of their right to get themselves searched from any Gazetted officer or Magistrate. However, they showed their willingness to get themselves searched from ASI Jagdish Singh.

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2.2. ASI Jagdish Singh searched the black colour polythene which was in the right hand of petitioner and currency notes of Rs.6,940/- drug money and one box of intoxicant tablets in which 50 strips with each strip 10/10 tablets, total 500 tablets mark Tramadol Hydrochloride Tablets 100 mg Clobedol-100 SR Tablets with batch no.CDVT 22013 MFG 02/2022 Exp. 01/2004 MRP Rs.192.50 paise per tabs incl of all taxes were recovered.

2.3. On search of co-accused-Kaur Singh, a black color polythene , one box of intoxicants tablets in which 10 strips with each 50/50 tablets in each strip total 500 intoxicant tablets mark Tramadol Hydrochloride Tablets 100 mg Colbedol-100 SR Tablets were recovered and whose 7 strips batch no.CDVT 22013 MFG 02/2022 Exp. 01/2024 was written and upon 3 strips there was no batch number written.

2.4. Then he conducted personal search of petitioner, one mobile phone mark liva black color was recovered from his right pocket of shirt and without that nothing was recovered.

2.5. Both the accused were in possession of aforesaid contraband without licence, doctor slip or permit. Both were arrested on the spot and are in custody since then.

3. Learned counsel for the petitioner submits that no independent witness was joined by the police party during alleged recovery when the incident is stated to have been happened on the main road. Petitioner has nothing to do with the alleged offence. Petitioners' willingness to be searched by the ASI is all a cooked up version.

3.1. Learned counsel for petitioner further contends that no prima facie case is made out against the petitioner from the highly improbable and unbelievable prosecution version.

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.

4. On the other hand, learned State counsel opposes the bail petition. He

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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. Petitioner is involved in two more cases, but he is on bail in those cases.

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

6. On a Court query, learned State counsel, on instructions from ASI Amrik Singh submits that after filing of challan, charges were framed way back on 24.07.2023. Trial has since commenced, investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation. Out of total 19 witnesses, none has been examined so far.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the past more than 08 months, being behind bars since 28.12.2022.

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

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

(ARUN MONGA)
JUDGE

September 15, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No