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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-51552-2021 (O&M)

Date of decision: 07.08.2023

Ram Chand

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. C.S.Rana, Advocate
for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Custody certificate of the petitioner has been tendered in Court by learned State counsel, which is taken on record.

2. After being declined bail by the trial court, petitioner before this Court, seeks his release as undertrial in criminal case bearing FIR No.160 dated 21.09.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station Doraha, District Ludhiana.

3. Petitioner Ram Chand was apprehended on 21.09.2021 by a police party. Per prosecution, petitioner was driving Innova Vehicle and co-accused Mathew was sitting on the front non-driving seat and near the feet of the co-accused one bag was found in which 450 Ampules of Rexogestic 2mls each and 480 vials of Avil 10 mls each were recovered. FIR was registered. Petitioner was taken into custody and investigation was carried out. Per FSL report received later on, the contents of injections/vials labelled as Avil were Pheniramine Maleate and the contents of injections labelled as Rexogesic were Buprenorphine Hydrochloride.

4. Learned counsel for petitioner contends that petitioner is a taxi driver and vehicle being driven by him was hired by co-accused as a passenger from whose conscious possession, the alleged recovery was made. Further states that petitioner

had not even an inkling of what he was carrying in his bag and was falsely implicated

merely because he was driving the vehicle from where recovery was made. He submits that alleged recovery has been made from the bag of co-accused Mathew and has been planted upon the petitioner.

5. He further submits that petitioner is in custody since 21.09.2021 and challan has already been presented before the competent Court. Petitioner is not required for custodial interrogation. No other case is pending against him. He further submits that petitioner is 60-year old.

6. On the other hand, learned State counsel, on instructions from ASI Lakhwinder Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. She submits that per FSL Report, alleged recovered quantity falls within the category of commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. Challan has been presented and charges have been framed on 08.03.2022. There are 12 prosecution witnesses. Five prosecution witnesses have already been examined and two witnesses have given up and five witnesses are yet to be examined. She, however, admits that no other case is pending against him.

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

8. Challan is stated to have been presented on 07.01.2022 and charges have also been framed. Since the investigation is complete *qua* petitioner, he is thus not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. There are total 12 witnesses cited by the prosecution and five witnesses are yet to be examined. Conclusion of the trial is likely to take quite some time. Whereas petitioner has already been languishing in jail for more than 01 year and 10 months in preventive custody, he being behind bars since 21.09.2021.

9. 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 Court below 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.

10. Petitioner is stated to be 60-year old family man and only bread winner of his family who has added responsibility of his wife and two sons, who are living in penury in his absence. Being a family man with clean antecedents, it is unlikely that he is flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence and he is not likely to commit any offence while on bail.

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. 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

07.08.2023
vandana

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