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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-47532-2022 (O&M)

Date of decision: July 18, 2023

Sukhwinder Singh @ Sukha

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Lakhwinder Singh Lakhanpal, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.161dated 06.08.2018, registered under Sections 21 and 29of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Adampur, Jalandhar, District Jalandhar.

2. Per prosecution version, 100 grams heroin along with five live cartridges of .315 bore were recovered from the possession of petitioner. 500 grams of heroin was recovered from the possession of co-accused, namely Joshia Amangwa @ Sumith. Petitioner was arrested on 06.08.2018. Petitioner was released on bail vide order dated 17.09.2018 (Annexure P-2) passed by learned Court below. However, subsequently he did not appear before learned trial Court and was declared a proclaimed offender vide order dated 05.03.2022. Petitioner was again arrested on 16.06.2022 and is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that alleged contraband was planted on the petitioner. He submits that there is no compliance of mandatory provisions of NDPS Act as neither any gazetted officer nor Magistrate was present on the spot. Petitioner is involved in two more cases, but is on bail in those cases. Nothing is to be recovered 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. Learned counsel for petitioner further submits that petitioner was released on bail vide order dated 17.09.2018 (Annexure P-2) passed by learned Court below. He was regularly appearing, but due to some family dispute with his wife, petitioner was under great mental stress and could not appear before learned trial Court and in such circumstances beyond his control, was declared a proclaimed offender vide order dated 05.03.2022. Learned

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counsel for petitioner would further urge that petitioner, if released on bail, will abide by all the terms and conditions so imposed by the Court.

4. On the other hand, learned State counsel, on instructions from SI Bhupinderpal 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 tampering with evidence and/ or influencing witnesses. There is one more case against the petitioner and he is not on bail in that case. She further states that challan has been filed and charges were framed on 20.08.2022. Out of 16 total witnesses, none has been examined so far.

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

6. Allegedly 100 grams of heroin was recovered from the possession of petitioner which is stated to be non-commercial. Alleged recovery of heroin from the possession of petitioner shall be adjudicated by the Court below after conclusion of trial. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Challan is stated to have been filed and even charges were framed and trial has commenced, petitioner is not required for custodial interrogation. Out of total 16 witnesses, none has been examined so far.

6.1. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the last more than 1 year in preventive custody, being behind bars from 16.06.2022. On the other hand, 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 except in the nature of FSL report *qua* contraband. That has already been filed in the trial Court and the accused has no access to the same. There is no reasonable probability of the petitioner tampering with the said documentary 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. Petitioner is stated to be 36-year old and the only bread winner of the family and in his absence, his family is living in sheer penury.

6.2. That apart, 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 this case, petitioner was though earlier released on bail vide order dated 17.09.2018 by learned Court below, but he could not appear before trial Court due to his family problems,

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leading to his arrest again on 16.06.2022. There is involvement of petitioner in any other crime during the period he could not appear before trial court due circumstances as explained by him.

7. Considering the overall scenario and without commenting on the merits of the case, I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody and the instant petition deserves being allowed.

8. 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 its Presiding Officer is not available, then to the satisfaction of learned Duty Judge, as the case may be.

9. 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.

10. 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/disposal of the instant bail petition alone and learned trial Court shall proceed further in accordance with law without being influenced with this order.

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

(ARUN MONGA)
JUDGE

July 18, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No