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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 15.09.2023

Gursewak Singh alias Lolla

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Bhavesh Aggarwal, Advocate for
Mr. Ashish Aggarwal, Advocate for the 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 undertrial in a case bearing FIR No.46 dated 26.06.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Kacha Pacca, District Tarn Taran.

2. Per FIR, on 26.06.2021, police party headed by SI Kulwant Singh during routine patrolling encountered petitioner coming on a motorcycle. On seeing the police personnel, petitioner got frightened and tried to turn back the motorcycle but it slipped and a plastic bag fell down which was placed in between head light and speedometer of the motorcycle. He was apprehended and on checking, 120 intoxicant tablets without any label were found in loose form. He was carrying the same without any permit or licence. After adopting the due procedure, the tablets were sealed and seized. Petitioner was arrested on the spot.

2.1. Per FSL report, Etizolam salt was found in the intoxicant powder and the total weight to be 20.64 grams.

3. Learned counsel for the petitioner contends that no intoxicant substance was recovered from conscious possession of petitioner. He submits that

alleged recovery of 120 loose tablets bearing no label or content of its salt have been planted on petitioner. He further submits that there is no compliance of Section 50 of the NDPS Act in the present case.

3.1 Further submits that no recovery is to be effected from the petitioner. No custodial interrogation is required either. No other case is pending against him.

3.2 He further argues that petitioner was arrested on 26.06.2021 but was granted the concession of interim bail by learned Special Court, Tarn Tarn vide order dated 29.07.2021 till the receipt of FSL report and he never misused the said bail privilege. Thereafter, petitioner himself surrendered before the trial Court on 11.11.2022 and is in custody since then. Further submits that challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars.

4. Per contra, learned State counsel submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. He, however, admits that petitioner is not involved in any other case.

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 Jagjit Singh, submits that challan was filed on 04.08.2022 and charges were framed on 11.11.2022. Trial has since commenced, petitioner is thus not required for custodial interrogation. Out of total 10 witnesses, only 01 has been examined so far. Trial is likely to take long time as it is proceedings at a snail pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for more than 02 years and 02 months in preventive custody, being behind bars since 26.06.2021.

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 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.

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. Petitioner is stated to be aged 29 years old man and his continued incarceration may rendered him jobless forever. Being a family person and having fixed abode and clean antecedents, it is unlikely that petitioner poses a flight risk and/or will flee from trial proceedings.

10. 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.

11. 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.

12. 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.

13. It is made clear that any observations and/or submissions noted herein above shall not have any effect on merits of the case as the same are for the limited

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purpose of hearing the instant bail petition alone and learned Trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

September 15, 2023
Ajay

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