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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 20, 2023

Leela Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jashandeep Singh Sandhu, Advocate for petitioner.

Mr. Madhur Sharma, 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.36 dated 02.03.2023, registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Kotwali Bathinda, District Bathinda.

2. According to the First Information Report (FIR), on March 2, 2023, in the vicinity of Mall Godown Road, near Lajja Devi Trust in Bathinda, a police team led by Sub-Inspector Harjiwan Singh apprehended a man and a woman on suspicion. They were found next to an Activa Scooter, placing a bag in the scooter's trunk. Upon questioning, they identified themselves as Leela Singh (the petitioner) and Gurpreet Kaur. Upon searching the aforementioned bag, 1200 tablets of ALPRASAFE-0.5 and 2300 tablets of CHELCIDOL 100-SR (Alprazolam and Tramadol) were discovered without any valid permits or licenses. They were promptly arrested, and the petitioner has been in custody since then.

3. Learned counsel for the petitioner submits that prosecution failed to comply with mandatory provisions of Sections 42, 50 and 52 of NDPS Act. No independent witness was joined by the police. No Gazetted officer or Magistrate was joined. He argues that the substance allegedly recovered from the petitioner is actually a prescription medicine. Also contends that there is a delay in sending sample to FSL and during this

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time, sample remained with the Investigating Officer, so tampering of case property cannot be ruled out. He would contend that there is no link to show complicity of the petitioner with the alleged recovery, and even nothing was recovered from his conscious possession. He further argues that petitioner was standing near the scooter and has nothing to do with either the ownership or even the rider/owner of the said scooter and merely his presence around the scooter is the sole reason of his being one of the suspects. Petitioner has thus been falsely implicated in this case.

3.1. Learned counsel contends that co-accused of the petitioner, namely, Gurpreet Kaur has already been granted concession of interim anticipatory bail vide order dated 04.09.2023 in CRM-M-43963-2023 passed by this Court.

3.2. Learned counsel would also contend 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. Learned counsel also contends that there is no other case against the petitioner.

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, however, admits that there is no other case against the petitioner. He also does not controvert the factum of interim anticipatory bail already granted to co-accused.

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

6. On a Court, learned State counsel, on instructions from ASI Paramjit Singh submits that challan has been presented on 09.08.2023, but charges are yet to be framed. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation.

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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 06½ months, being behind bars since 02.03.2023.

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 45-year old family person having wife and one minor child who are living in sheer penury in his absence. Being family man, having fixed abode and clean antecedents, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

11. Co-accused of the petitioner has also been granted concession of interim anticipatory bail, as aforesaid.

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 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.

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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 20, 2023
mahavir

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