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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46178-2023 (O&M)

Date of decision: September 20, 2023

Vishal Kumar @ Dholi

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rajiv Kumar Saini, 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.26 dated 10.02.2023, registered under Sections 21(b), 25, 27(a) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Dinanagar, District Gurdaspur.

2. Per FIR, ASI Yousuf Masih along with other police officials was on routine patrolling duty. A secret information was received that accused Satnam Singh @ Satti and her wife Sunita were indulging in sale of heroin. They were enroute on a two-wheeler from village Chani Beli (Himachal Pradesh) to Dinanagar. Accordingly, on the day of occurrence, a barricade was erected at the disclosed place and at about 10:15 p.m., a scooter was seen coming which was being driven by a boy with one lady as a pillion. They were signaled to stop. On seeing the police party, they got perplexed and tried to turn back but were apprehended by the police party. On checking 100 grams heroin along with one electronic scale and drug money of Rs.1,50,000/- were recovered from the boot of scooter. During the course of investigation, they disclosed that they had procured 01 kg of heroin from one Manjit Singh and sold the same to Ajay Kumar, Vishal Kumar (petitioner) and Deepak Kumar. Accordingly, on the basis of aforesaid disclosure statement, petitioner was arrested on 25.07.2023 and is in custody since then.

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3. At the outset, learned counsel for the petitioner contends that co-accused of petitioner namely Manjit Singh @ Mithu and Sunita have been granted the concession of anticipatory bail and regular bail by this Court, as per order dated 25.07.2023 (Annexure P-2) passed in CRM-M-12051-2023 and 22.08.2023 (Annexure P-3) passed in CRM-M-16115-2023. Another co-accused, namely Ajay Kumar has also been granted concession of bail by this Court vide order dated 19.09.2023 passed in CRM-M-31257-2023.

3.1. Learned counsel for the petitioner contends that petitioner has been nominated as accused on the basis of alleged disclosure statement of Satnam Singh @ Satti from whom the police is stated to have recovered 100 grams of heroin, drug money and one electronic weighing machine. He further contends that veracity and evidentiary value of said disclosure statement is subject matter of the trial. He further urges that recovery effected in this case falls under non-commercial quantity.

3.2. Learned counsel submits that case of the petitioner is on better footing than his co-accused. Even after disclosure statement, nothing was recovered from the petitioner so as to invoke provisions of NDPS Act. He further states that merely because petitioner had an amount of Rs.1,06,700/- at his residence, from where same was recovered, an unfounded presumption has been drawn against him that said money is linked with drugs without there being any corroborating evidence *qua* the same.

3.3. He further submits that investigation is over. Petitioner is not required for custodial interrogation. Petitioner is in custody since 25.07.2023. Challan has already been presented before the competent Court. 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 submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. Moreover, petitioner is involved in 02 other cases under NDPS Act, but he is on bail in those cases. Petitioner is also required on production warrants in yet another case under NDPS Act, per custody certificate. He further submits that since petitioner is also involved under Section 27(a) of

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the NDPS Act in the present case, rigors of Section 37 of NDPS Act are applicable in the present case.

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 Gurcharan Singh, submits that challan was filed on 04.08.2023, but charges have not been framed. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation. There are total 15 witnesses of prosecution. Trial is likely to take long time as it is proceeding at a snail pace. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for almost 01½ months in preventive custody, being behind bars since 25.07.2023.

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 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.

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 not likely to commit any offence while on bail.

9. Petitioner is stated to be a 30-year old family man and having fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

10. Co-accused of the petitioner have also been granted concession of anticipatory bail/ regular bail, as aforesaid.

12. Accordingly, petitioner is ordered to be released on bail, in case 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 he/she is not available, before learned Duty Judge, as the case may be.

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.

(ARUN MONGA)
JUDGE

Yes/No