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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48961-2022 (O&M)

Date of decision: 22.08.2023

Arshdeep Singh

....Petitioner

versus

State of Punjab

...Respondent

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

Ms. Guramrit Kaur, DAG, 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.150 dated 09.07.2022, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Sultanpur Lodhi, District Kapurthala.

2. Per prosecution case, on 09.07.2022, ASI Makhan Singh along with other police officials was going in a private car on routine patrolling and checking. When they reached Deepewal Chowk, one person was seen coming on foot. On seeing the police party, he tried to flee but was apprehended on suspicion. He then took out a polythene carry bag from right pocket of his pants and threw it on the corner of the road. On checking, 280 grams of powder, suspected to be contraband, was recovered from conscious possession of the petitioner after carrying out the necessary formalities. Petitioner was arrested from the spot. He is in custody ever since. Per FSL report, Alprazolam salt was later detected in the sample parcel of intoxicant powder recovered from possession of the petitioner.

3. Learned counsel for the petitioner further submits that petitioner is totally innocent and has been falsely implicated. Petitioner has no concern with the alleged recovery and is not even remotely connected with it. He further contends that in the present case, mandatory provisions of Section 50 of the NDPS Act were not complied with. No independent witness was joined by the police party.

3.1. He also submits that 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. He further submits that no other case is pending against the petitioner.

4. On the other hand, learned State counsel 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. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. She however, admits that no other case is pending against him.

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 Sukhdev Singh, submits that challan was presented on 08.12.2022. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Charges are yet to be framed. There are 10 prosecution witnesses. Allegations against petitioner are matter of trial at this stage. Commencement/conclusion of the trial is likely to take quite sometime. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for more than 01 year and 01 month in preventive custody, being in custody since 09.07.2022.

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. Be that as it may, 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 a young student, aged 21 years, who is on the cross-roads of his career and his future is getting severely jeopardized p due to prolonged incarceration. Having clean antecedents and fixed abode, it is unlikely that he poses any 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, 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 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 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.

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

(ARUN MONGA)
JUDGE

22.08.2023
vandana

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