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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 22, 2023

Bhagwan Ram

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Mohit Thakur, 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.233 dated 21.09.2022, registered under Sections 22(C), 15(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Lambi, District Sri Muktsar Sahib.

2. Per FIR, on 21.09.2022, in the area of Police Station Lambi, petitioner along with his co-accused, namely, Mala Ram was apprehended. On suspicion, 3500 strips each containing 10/10 intoxicant tablets (mark Tramadol Hydrochloride sustained release tablets IP 100 gm Cypremal-100 SR Batch number was not printed) were recovered from the tool box of the truck bearing No.RJ-19GB-3996, in a white coloured plastic bag, and from the black coloured plastic bag, 10 kilograms of poppy husk (including plastic bag) was recovered, without any permit or licence. Petitioner is in custody since then.

3. Learned counsel for the petitioner contends that petitioner is a daily wager who works for the owner/ driver of the truck. He was paid Rs.1,500/- per trip as a cleaner/ helper of the truck when the same was used for transportation purposes by the owner/ driver of it. Further submits that affirmative case of the prosecution is that prescription drugs constituting 35,000/- tablets (Tramadol) along with 10 kilograms of poppy-husk was recovered from the tool box of the truck and submits that petitioner had no knowledge of the same, and if at all, the same was within the knowledge of driver/ owner of the truck.

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3.1. Learned counsel also contends that no alleged recovery was effected from conscious possession of the petitioner. Also contends that no independent witness was joined at the time of alleged recovery. There is non-compliance of mandatory provisions of Section 50 of the NDPS Act. Petitioner was picked up at midnight from his house. Petitioner has thus been falsely implicated in this case.

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.

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 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, learned State counsel, on instructions from SI Amar Singh, submits that challan has already been filed and charges were framed on 15.07.2023. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation. Out of total 27 witnesses, none have been examined so far. Trial is likely to take long time as it is proceeding 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 around 01 year in preventive custody, being behind bars since 21.09.2022.

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

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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 22-year old young person having family constituting 03 unmarried sisters, grandfather and grandmother, who are living in sheer penury in his absence. Father of the petitioner has already died. Being family man and having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from the 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, 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.

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. 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.

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

(ARUN MONGA)
JUDGE

September 22, 2023

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No