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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 25.09.2023

Dharambir

....Petitioner

V/s

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Raman Chawla, Advocate for the petitioner.

Mr. Karan Sharma, DAG Haryana.

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.179 dated 09.03.2023, registered under Sections 20(B)(ii)(c), 25, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Barwala, District Hisar.

2. Per First Information Report (FIR), a secret information was received that accused Parveen Kumar was indulging in sale of contraband i.e. Ganja. Accordingly, a barricade was erected near Bharat Dharamkanta, Barwala Bypass, Hisar and accused Parveen Kumar was seen coming from the side of Hansi. He was signaled to stop. On seeing the police party, he tried to flee but was apprehended by the police party. On checking, he was found in possession of 48 kgs of Ganja and was arrested on the spot. During the course of investigation, he suffered disclosure statement implicating the petitioner being the owner and driver of the truck in which, he allegedly brought 90 kilograms of Ganja from Visakhapatnam. Accordingly, on the basis of aforesaid disclosure statement, petitioner was arrested on 10.03.2023 and nominated as an accused.

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3. Learned counsel for the petitioner contends that petitioner was neither named in the FIR nor apprehended at the spot. He further submits that petitioner has been nominated on the basis of custodial disclosure statement of co-accused, which is not *per se* admissible evidence. Petitioner has nothing to do with the alleged offence. Apart from confessional statement, there is not even an iota of evidence to support the case of prosecution. Thus, petitioner has been falsely implicated in this case.

3.1 Further contends that recovery of 48 kilograms of contraband i.e. Ganja, which is a commercial quantity, was recovered from the possession of co-accused Parveen and thus, rigors of Section 37 of NDPS Act would not be applicable in the present case as the same would be attracted only when it was recovered from conscious possession of petitioner. Moreover, nothing is to be recovered from the petitioner and, thus, no useful purpose would be served by keeping him behind bars.

3.2 He further argues that petitioner is not required for custodial interrogation. Petitioner is in custody since 10.03.2023. Petitioner is not involved in any other case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that the quantity of contraband recovered falls under commercial quantity as per provisions of the NDPS Act and rigors of Section 37 of NDPS Act would be applicable in this case. In case, petitioner is granted concession of bail, there are chances of his fleeing. 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, under instructions from ASI Mahinder submits that challan is being finalized and likely to be submitted

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shortly in due course. Investigation *qua* petitioner is complete and petitioner is thus not required for custodial interrogation.

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 languishing in jail for more than 06½ months, being behind bars since 10.03.2023.

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 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.

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 unlikely to commit any offence while on bail.

10. Petitioner is stated to be 23-year family man with clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from trial proceedings.

11. 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.

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12. Accordingly, petitioner is ordered to be released on bail on his furnishing bail bonds and surety bonds to the satisfaction of learned Ilqa Magistrate/Duty Magistrate, as the case may be.

13. 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.

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

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

(ARUN MONGA)
JUDGE

September 25, 2023
Ajay

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