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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-49933-2022****Date of decision: 29.03.2023**

Harpreet Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.P.S.Khaira, Advocate,
For the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial court, this is first foray of petitioner before this court, seeking his release as under trial in criminal case bearing FIR No.0016 dated 22.01.2020, registered under Sections 21 and 29 of NDPS Act (Section 473 IPC added later on) at Police Station Special Task Force, STF Wing, Phase-IV, SAS Nagar, Punjab.

2. Per FIR, on 22.01.2020, a police party headed by Inspector Harbans Singh was on routine search for drug peddlers in the area falling under their police station. They erected nakabandi (barricading) on a link road. At about 2:15 p.m., a secret informer divulged that Jagdev Singh @ Jaggi and his brother Parminder Singh @ Meena, Mandeep Singh @Mika son of Pindu, Sonu Ghalaut and Harpreet Singh (petitioner), in connivance with each other are illegally selling heroin. He further informed that all of them were going to Ludhiana from Doraha in a white coloured lancer car

bearing No.PB-10-DA-4041. Based on said information, Inspector Harbans Singh sent ruqa to police station for formal registration of FIR. Formal FIR was registered. Further investigation was handed over to SI Gurcharan Singh. Contraband-Heroin weighing 02 kg 20 grams was allegedly recovered from petitioner and his four co-accused. All the accused were arrested. Petitioner has been in custody ever since.

3. Learned counsel for petitioner *inter alia* contends that petitioner has been falsely implicated. Alleged recovery was not made from his conscious possession. It was recovered from beneath the driver seat. The car from which alleged recovery has been effected, was not being driven by him but by co-accused Jagdev Singh. Petitioner was not aware of contents of car and was just sitting/travelling in the car. He further submits that even the recovery memo does not bear signatures of petitioner.

3.1. Challan has already been presented and charge has been framed. But the trial is proceeding at a snail pace.

3.2. Learned counsel further contends that till date only one witness has been examined. Petitioner is in custody since day one of the FIR. Conclusion of trial will take long time. No useful purpose would be served by keeping petitioner in further preventive custody.

3.3. He strenuously argues that rigors of section 37 of the Act are amiss herein, as the trial is likely to result in acquittal of petitioner. However, due to delay/slow pace of trial, petitioner continues to be under incarceration. He contends that petitioner is not involved in any other case. Case of the petitioner is at par with co-accused, namely, Parminder Singh,

who has already been granted concession of bail by this Court vide order dated 08.02.2023 passed in CRM-M-5378-2023.

4. Per contra, learned State counsel opposes the bail petition and submits that recovery is commercial in nature.

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

6. Petitioner is in custody in this case since 22.01.2020. Investigation is complete. There are total 22 witnesses out of which only 01 has been examined. There has been virtually no progress in trial except examination of only one prosecution witness. Trial is still likely to take long time, whereas petitioner has already been languishing in jail for the past more than three years in preventive custody.

7. Petitioner is stated to be earning member of family and there is no one to look after his aged senior citizen parents and are finding it very difficult to pursue their daily pursuits in the absence of petitioner.

8. Learned counsel for petitioner also points out that the case in hand has been investigated by an *ad hoc* rank Sub Inspector Gurcharan Singh, whereas he is effectively of the rank of head constable. Thus, there has been serious violation of notification dated 03.09.1987 issued by the Government of Punjab, which envisages that only officers of the rank of ASI and above can exercise powers and perform duties specified under section 42 and 67 of the NDPS act.

9. Co-accused Parminder Singh, whose case is at par with the petitioner, has already been released on bail by this Court.

10. Considering the overall scenario and without commenting on merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody.

11. 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.

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.

(ARUN MONGA)
JUDGE

29.03.2023
vandana

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