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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50418-2022 (O&M)

Date of decision: 24.08.2023

Avtar Singh

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. T.S.Grewal, 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.101 dated 24.08.2020, registered under Sections 22 (C), 29, 25 and 31(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), (Section 207 of Motor Vehicles Act, 1988 and Section 201 of IPC added later on) at Police Station, Special Task Force, Mohali, District SAS Nagar.

2. As per prosecution version, on 24.08.2020, ASI Piara Singh received a secret information that Sinder Ram @ Chhinda, Kuldeep Singh, Vikramjit Singh @ Vicky and Avtar Singh (present petitioner) indulge in illegal sale and purchase of narcotic tablets/prescription medicines in their swift cars bearing registration Nos. HR-51-BA-1783 and UP-171-8125. During *naqabandi*, Shinder Ram and Kuldeep Singh were nabbed while transporting 45,000 intoxicant tablets containing Tramadol Hydrochloride, Clovidol-100 SR, 12500 Carisoprodol (carisoma) and 450 vials of Wincirex containing narcotic syrup. Allegedly, petitioner along with co-accused Vikramjeet Singh absconded from the spot. During course of investigation, petitioner was arrested on 06.07.2022 and since then he is in custody.

3 Learned counsel for the petitioner contends that only allegation against the petitioner is that petitioner was having some telephonic calls with the co-accused, who were arrested from the spot, whereas, he was no where even near there. Barring this, no other evidence against him has come forth during the entire investigation. He further

submits that mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioner is not involved in any other case. Petitioner has thus been falsely implicated in the present case.

3.1 Further argues that co-accused of the petitioner, namely, Kuldeep Singh has already been accorded concession of bail by a coordinate Bench of this Court. Petitioner's case is better than co-accused Kuldeep Singh, who is on bail and yet, petitioner continues to be in jail, he contends. He also argues that on this ground alone, petitioner is entitled to be released on bail during pendency of trial.

3.2 He further submits that ingredients of Section 31-A of NDPS Act are not made out against the petitioner as concededly there is no other case pending against him under the said Act.

3.3 Learned counsel 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.

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 does not controvert that one of the prime accused Kuldeep Singh, from whom the alleged recovery was effected, has been granted bail by a coordinate Bench of this Court vide CRM M-40979-2020 dated 11.04.2023.

7. Learned State counsel, on instructions from ASI Swatantarpal Singh, submits that challan was filed on 31.08.2022 and charges were framed on 17.09.2022. Investigation *qua* the petitioner is complete. Petitioner is thus not required for

custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of 42 prosecution witnesses, 04 have been examined and 2 have been given up and next date before learned trial Court is 29.08.2023. Conclusion of trial will take some time. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 01 year and 01 month, being in custody since 06.07.2022.

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 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.

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 a young boy, aged 18 years and is on the cross-roads of his career and his future is getting severely jeopardized due to prolonged incarceration. Having got 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.

12. 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.

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 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.

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

(ARUN MONGA)
JUDGE

24.08.2023
vandana

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