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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48006-2023 (O&M)

Date of decision: October 09, 2023

Tofique

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sandeep S. Majithia, Advocate and
Mr. Shivdeep, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking his release as an undertrial in a case FIR No.0108 dated 01.03.2022, registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') and Sections 25 and 27 of the Arms Act, 1959 (hereafter referred to as 'Arms Act'), at the Hodal, Police Station in Palwal.

2. According to the prosecution's account, on March 1, 2022, ASI Rajesh Kumar, along with other police officials, was on duty at Hassanpur Chowk, Hodal, Palwal. They had received confidential information that a truck with registration No. RJ-20-GB-8399 was being driven by Mohammad, accompanied by his associate Ashif. They were being followed by a Verna car with registration No. HR-96-3618, which had Lakhpat, Soeb, Ash Mohd, and Tofique (the petitioner) inside. The confidential source had indicated that these individuals were involved in transporting ganja patti. To intercept them, a temporary barricade was set up at Karman Border, Hodal. An intimation was sent under Section 42 of the NDPS Act. After some time, the Verna car arrived and was stopped. All four occupants were subdued, and the car was secured separately under the supervision of a Head Constable. Later, the truck with registration No. RJ-20-GB-8399 also arrived, and two individuals from the truck were apprehended. The driver identified himself as Mohammad, son of Abdul, from Khedli Nanu, District Rajasthan, and the co-driver identified himself as Aashif, son of Bashir, from

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Babupur, Tehsil Hathin, District Palwal. A notice under Section 50 of the NDPS Act was issued, and they requested that the search be conducted in the presence of a Gazetted Officer. Sh. Sanjiv Nagar, Tehsildar, Hodal, was informed and arrived at the scene. Upon searching the truck, 44 bags concealed under coconuts were discovered, containing a total of 1369 kilograms and 300 grams of ganja patti, which was subsequently seized. The individual seated in the driver's seat of the car identified himself as Soeb, son of Gore Khan, residing in Sultanpur, Tehsil Nagina, District Nuh. All other suspects, including the petitioner, were also taken into custody. Additionally, a pistol and three rounds were found on the car's dashboard, which were duly sealed and confiscated. An FIR was registered, and the petitioner was arrested and has been in custody since March 1, 2022.

3. Initially, the petitioner's learned counsel points out that the petitioner's co-accused, namely, Soeb @ Mohd. Soeb and Lakhpat, were already granted bail by this Court through an order dated September 6, 2023, passed in CRM-M-23793-2023 and a connected case. He contends that the petitioner's case is on an identical footing to that of the co-accused, Lakhpat, and seeks parity.

3.1. Furthermore, the petitioner's counsel contends that there is no material evidence connecting the petitioner to the other co-accused, as there was no transaction of any kind between them. The allegation against the petitioner is solely based on his disclosure statement, which is not admissible as evidence. He also argues that the intimation regarding the secret information was sent to senior officials after the registration of the FIR in question. The secret information was received by S.I. Rajesh Kumar, C.A. of C.I.A. Staff, Hodal, who is not entitled to conduct the investigation. He also asserts that the car in question does not belong to the petitioner, and no alleged contraband or weapon was found on the petitioner's person. One pistol and three live cartridges were allegedly recovered from the dashboard of the car, which cannot be considered as conscious possession. The petitioner's counsel further contends that despite such a substantial alleged recovery and prior secret information, no independent witnesses were joined by the police.

3.2. The petitioner's counsel also emphasizes that no independent witness was present at the time of the alleged recovery, suggesting that the petitioner has been falsely implicated in the present case.

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3.3. Finally, he submits that nothing more needs to be recovered from the petitioner, and he is not required for further custodial interrogation. There is no likelihood of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition, arguing that the petitioner has committed a serious offense. If the petitioner is granted bail, there are chances of him fleeing from trial proceedings. He submits that the recovery of contraband falls within the ambit of a commercial quantity, and the rigors of Section 37 of the NDPS Act would be attracted in this case. However, he admits that no other case is pending against him.

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

6. In response to a query from the Court, under instructions from ASI Mahanand, learned State counsel submits that after filing the challan, charges were framed on 05.09.2022. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation. Of 27 prosecution witness, 6 have already been examined so far.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since March 01, 2022, for more than 01 year and 07 months.

8. The investigation regarding the petitioner is over, but he is being kept in preventive custody merely on an unfounded suspicion that if he is let out, he may either tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report concerning the contraband, which has already been filed in the Court below and is inaccessible to the accused. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

9. Be that as it may, the offense allegedly committed by the petitioner is non-violent in nature, and in that sense, his release on bail does not pose a threat to society at large in terms of committing any violent crime. At this stage, there appears to be a reasonable

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ground that petitioner may not be guilty of the alleged offence. He is not likely to commit any offence while on bail.

10. The petitioner is stated to be a 43-year-old family person. Having fixed abode and a person with a clean record, it is unlikely that he is a flight risk or will flee from the trial proceedings.

11. Co-accused of the petitioner have already been granted concession of bail by this Court, as aforesaid.

12. 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 by keeping the petitioner in further preventive custody.

13. Accordingly, the petitioner is ordered to be released on bail, if not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the Ld. trial Court, where his case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

14. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of his bail in the instant case.

15. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

16. Pending applications, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 09, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No