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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 29.09.2023

Deepak Kumar

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arjun Veer Sharma, Advocate for the petitioner.

Mr. Mohit Chaudhary, AAG Punjab.

ARUN MONGA, J. (Oral)

This is third foray of the petitioner seeking his release as an undertrial in a case bearing FIR No.48 dated 29.03.2021, registered under Sections 22 and of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Doraha, Police District Khanna, District Ludhiana. Earlier he filed two petitions; first was dismissed as withdrawn on 26.11.2021 (Annexure P-4 colly.) and second was dismissed on merits by a coordinate Bench, vide order dated 28.02.2023 (Annexure P-4 colly.).

2. Per FIR, police party on receipt of a tip-off, erected a barricade and petitioner was apprehended along with co-accused Jatinder Kumar alias Shanty in a car. Petitioner was driving the car while co-accused was sitting on the rear seat. On checking, from the rear seat of the car, 05 packets of Buprenorphine Injections IP Rexogesic 2 mls each, total 500 ampules and 20 boxes of glass injection vials labelled as Avil, total 500 vials and each containing 10 ml of colourless liquid material were recovered, which were sealed and seized after adopting due procedure. They were taken in custody from the spot.

3. Learned counsel for the petitioner contends that the alleged contraband was planted on petitioner and was not recovered from his conscious

possession. Per prosecution version, the same was allegedly found on the rear seat of the car where co-accused of the petitioner was sitting. Since, petitioner had merely given a lift to co-accused in the car, he had no knowledge of contents of the bag being carried by co-accused. According to him, petitioner and co-accused are not known to each other and are strangers. He further submits that petitioner is a Punjab State Government employee and is employed as Junior Engineer at Kapurthala. Even father of the petitioner had retired from a government job. There are no chances of his fleeing from justice.

3.1 He further submits that it is still a debatable issue whether the alleged contraband was in conscious possession of the petitioner. Thus, petitioner has nothing to do with the alleged offence and alleged recovery of contraband is doubtful. He further contends that even for the sake of arguments, if petitioner were to be treated as an accomplice, possession of contraband recovered below one hundred dosages, is permissible and such possession does not infer any penal proceedings against him.

3.2 Further 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. He further submits petitioner is totally innocent and has been falsely implicated in the present case. Petitioner is not involved in any other case.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. He further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. He further contends that petitioner was owner as well as driver of the car from where the contraband was recovered. Further urges that there has been no change of

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circumstances after the dismissal of second bail petition on merits on 28.02.2023, except the duration of custody period and as such, petitioner is not entitled to be released on bail. He, however, admits that petitioner is not involved in any other case.

4.1 In rebuttal, learned counsel for the petitioner points out that co-accused, Jatinder Kumar alias Shanty, who is the principal accused from whose bag and conscious possession the alleged contraband was recovered, has already been extended the concession of bail by a coordinate bench of this Court vide order dated 13.09.2023 (Annexure P-3) passed in CRM-M-27405-2022, which is a material change in circumstances, for the purpose of entertaining the instant bail petition.

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, assisted by ASI Hardem Singh, submits that challan was presented on 05.07.2021 and charges were framed on 21.09.2021. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. There are 22 prosecution witnesses and only 03 have been examined till date and 01 has been given up. Conclusion of trial is likely to take quite some time. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas petitioner has already been languishing in jail for more than 02 years and 06 months in preventive custody, being behind bars since 29.03.2021.

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 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.

8. Be that as it may, 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.

9. Petitioner is 33-year old married person, having a family. Being a family man, Government employee, having fixed abode and clean antecedents, it is unlikely that he is flight risk and/or will flee from the trial proceedings.

10. Co-accused was granted the concession of bail by this Court vide order dated 13.09.2023.

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 herein above shall not have any effect on merits of the case as the same are for the

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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

September 29, 2023
Ajay

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