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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 19, 2023

Omendra Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Ms. Deepali Verma, Advocate for
Mr. S.K. Kanojia, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

ARUN MONGA, J. (ORAL)

Status report by way of affidavit dated October 19, 2023 has been tendered in course of hearing by learned State counsel, which is taken on record.

2. 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 bearing FIR No.57 dated April 26, 2023, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Balongi, Police Station in S.A.S. Nagar, Mohali.

3. According to the prosecution's account, on April 26, 2023, ASI Harbhej Singh, along with a police party in a government vehicle, was conducting routine patrolling and checking for antisocial elements while coming from Airport Road, Mullanpur. At approximately 4:15 p.m., when the police party reached the T-point at Hussainpur, they spotted two individuals carrying black-colored neck pouches/bags. Upon seeing the police party, they attempted to move back towards a mango garden. They were apprehended on suspicion, and upon search, 1 kg of opium was recovered from Paan Singh, 2 kg of opium from co-accused Sunil Kumar, and 1 kg of opium from Omendra Singh (the petitioner). An FIR was registered, and all of them were arrested on the spot. The petitioner has been in custody ever since.

4. Firstly, the learned counsel for the petitioner argues that the co-accused, Pan Singh and Sunil Kumar, were granted bail in orders dated August 22, 2023 (Annexure P-3)

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passed in CRM-M-34889-2023 and an order dated October 03, 2023 (Annexure P-5) passed in CRM-M-37561-2023, respectively, by this Court.

4.1. The learned counsel for the petitioner further submits that the mandatory provisions of Section 50 of the NDPS Act were not complied with. He argues that no independent witness was joined by the police party. He also asserts that the alleged recovered contraband from the petitioner was non-commercial in nature, and the petitioner is not involved in any other case.

4.2. Additionally, the learned counsel emphasizes that no incriminating items were found in the petitioner's immediate possession, suggesting that the petitioner has been wrongfully detained in this case.

4.3. Finally, the learned counsel affirms that further custodial interrogation is unnecessary, as there is nothing more to be recovered from the petitioner, and there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

5. 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 his fleeing from trial proceedings. 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. He further submits that petitioner is involved in another case under NDPS Act.

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

7. In response to a query from the Court, under instructions from police official, learned State counsel submits that challan has already been filed on September 12, 2023, but charges are yet to be framed. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation. Of the seventeen witnesses of prosecution, none has been examined so far.

8. 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

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determined. In contrast, the petitioner has been in detention since April 26, 2023, for more than 05½ months.

9. 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.

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

11. The petitioner is stated to be 18-year-old young boy and his entire career prospects will be ruined due to his long incarceration. Having fixed abode, it is unlikely that he is a flight risk or will flee from the trial proceedings.

12. Co-accused of petitioner have been granted the concession of bail by this Court. I see no reason as to why petitioner be not meted with same treatment.

13. 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.

14. 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.

15. 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.

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16. 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.

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

(ARUN MONGA)
JUDGE

October 19, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No