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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 06.10.2023

Aman Mahajan

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Munish Puri, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Following the denial of bail by learned trial court, the petitioner is now before this Court seeking his release as an undertrial in a case with FIR No.161 dated 07.12.2022 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at the Ghanaur, Police Station, in Patiala.

2. Per prosecution version, ASI Gurdeep Singh along with Constable Gurpal Singh was on patrolling duty and was present near main road, Bus stand Ghanaur. At about 11:45 am, petitioner was seen coming out of the bus stand. On seeing the police party, he got frightened and tried to turn back. On checking, 31 bottles of Codistar 100 ml Codeine Phosphate and Chlorpheniramine Maleate Syrup and 09 bottles of Corex 100 ml Chlorpheniramine Maleate and Codeine Phosphate Syrup were recovered. He was carrying the same without any permit or licence. After adopting the due procedure, the same were taken into police possession. Petitioner was arrested on the spot.

3. Learned counsel for the petitioner contends that alleged recovery from the petitioner does not fall in the definition of manufactured drugs and even

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if the recovery is believed as gospel truth, the same cannot be said to be under the NDPS Act as defined in Section 2(xiv) of the NDPS Act.

3.1 Learned counsel further submits that petitioner has not committed any offence under the NDPS Act in view notification dated 14.11.1985, issued by Central Government, Entry 35, in which there is an exception made that Methyl morphine (commonly known as “Codeine”) and Ethyl morphine and their salts (including Dionine), all dilutions and preparation, except those which are compounded with one or more other ingredients and containing not more than 100 milligrams of drug per dosage unit and with a concentration of not more than 2.5% in undivided preparations and which have been established in therapeutic practice, shall not be deemed to be “Manufactured Drugs”.

3.2 Leaned counsel has relied upon judgment of the Himachal Pradesh High Court titled *Raghav Saini vs. State of Himachal Pradesh*¹ to contend that if any drug contains not more than 100 milligrams of Methyl Morphine, which is commonly known as Codeine, per dosage unit, and in that drug Codeine is compounded with one or more other ingredients and if in the drug the concentration of Codeine is not more than 2.5% in undivided preparations and the drug has been established in Therapeutic practice, will not be a “Manufactured Drug” and therefore, it will not be a prohibited drug as detailed under Section 10 of the Act.

3.3 Further submits that petitioner is in custody since 07.12.2022 and challan has already been presented. Conclusion of trial will take long time. Thus, no useful purpose would be served by keeping the petitioner behind the bars. No other case is pending against him.

4. Per contra, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence and as such he is not

¹ Cr.MP(M) No.2866 of 2022 decided on 26.06.2023

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entitled to concession of bail. He further submits that alleged recovered quantity fall within the category of commercial quantity and thus, rigors of Section 37 of the NDPS Act would be attracted in this case.

5. I have heard the rival arguments and reviewed the case file.

6. On a Court query, under instructions from ASI Rajinder Singh, learned State counsel submits that challan was filed on 03.06.2023. Charges have also been framed on 02.09.2023. Investigation is thus complete *qua* petitioner, he is not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Commencement/conclusion of the trial is likely to take quite sometime as it is proceeding at a snail pace. Whereas petitioner has been languishing in jail for almost 10 months in preventive custody, per custody certificate, having remained in custody since 07.12.2022.

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.

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9. Petitioner is stated to be 32 year old unmarried person having added responsibilities of his old aged ailing mother, who is living in sheer penury in his absence. His continued incarceration may jeopardize his career prospects and he may also rendered jobless forever. Being family man and having fixed abode, it is unlikely that they pose any flight risk and/or will flee from trial proceedings.
10. 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.
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.
13. 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.
14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 06, 2023
Ajay

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