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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50256-2023 (O&M)

Date of decision: October 18, 2023

Gurdhyan Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Mohit Shukla, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

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 bearing FIR No.158 dated 04.10.2022, registered under Sections 22, 27, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Anaj Mandi, Police Station in Patiala.

2. According to the prosecution's account, on October 04, 2022, at approximately 8:45 p.m., a person on a motorcycle was stopped by a police officer on suspicion. The individual identified themselves as Gurdhian Singh (the petitioner). During a search, a polythene envelope attached to the motorcycle's handle was found, containing 90 strips of Lomotil, each with 60 tablets, and 5 strips of Alpraxsafe 0.5, each containing 10 tablets. According to the FSL report, the detected ingredient is Diphenoxylate Hydrochloride, and the average weight of the tablets was determined to be 64 mg per tablet, totaling $5,400 \times 64 \text{ mg/tablet} / 1000 = 345.6$ grams. In a disclosure statement, the petitioner claimed that the intoxicating tablets had been given to him by Sucha Singh. The petitioner was arrested on the spot and has been in custody since then.

3. The matter was heard on 10.10.2023, and the following order was passed by this Court:

“Learned State counsel to file report and also to specify therein whether being a banned manufactured drug i.e., Lomotil, if any notice was

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*issued to the pharmaceutical company, the name of which was printed on the strips of said drug which was recovered in the FIR in question?
Post it on 18.10.2023.”*

3.1. On the resumed hearing today, the learned State counsel has requested more time to file a report concerning the aforementioned order. Be that as it may it is left to the investigative agency to proceed further in accordance with law.

3.2. Nonetheless, the petitioner's counsel argues that the co-accused, Sucha Singh, had already been granted bail by this Court, as per the order dated August 18, 2023, issued in CRM-M-26932-2023.

3.3. The petitioner's counsel asserts that the petitioner has not committed the alleged offense, and nothing was found in his physical possession. They claim that the alleged recovery was staged and that no independent witness was present during the alleged recovery. Moreover, the petitioner was not offered the opportunity to be searched in the presence of a gazetted officer or magistrate, indicating non-compliance with the mandatory provisions of the NDPS Act.

3.4. Additionally, the 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.

3.5. Finally, the 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.

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 her fleeing from trial proceedings. He however, admits that petitioner is not involved in any other case.

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 Malkit Singh, learned State counsel submits that challan has already been filed, but charges are

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not yet framed. Investigation is thus complete regarding the petitioner, and he is not required for custodial interrogation.

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 October 04, 2022, for more than 01 year.

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

10. Co-accused of the petitioner has already been granted bail by this Court, as aforesaid.

11. The petitioner is stated to be a 32-year-old. Having fixed abode, it is unlikely that he is a flight risk or will flee from the trial proceedings.

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

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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 her 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 18, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No