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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52579-2022 (O&M)

Date of decision: August 07, 2023

Sushil Kumar @ Mandy

....Petitioner

versus

State of Punjab

....Respondent

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

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as undertrial in a case bearing FIR No.110dated 26.07.2021, registered under Sections 22, 22-C, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, STF Phase-4, Mohali, District SAS Nagar.

2. Per prosecution version, on 25.07.2021 at around 10:00 p.m., accused one Amit Arora along with one Naveen Saini were apprehended on suspicion. From their possession 700 tablets of Roldal100-SR (containing Tramadol), 100 tablets Clovidol 100-SR (containing Tramadol) and 570 capsules of SPASMO-A VON PLUS were recovered alongwith Rs.1,40,000/- currency notes and ALTO car bearing No.PB-10-GB-9198 which is in the ownership of accused Amit Arora. Subsequently, on their disclosure, petitioner-Sushil Kumar @ Mandy was arrested on 27.07.2021. Recovery of 795 strips of SPASMO-A VON PLUS capsules total 6360 capsules, 300 strips of SPASCORE-VON PLUS capsules total 2400 capsules, 218 strips of TRAMADOL CAPSULES total 2180 tablets, 230 STRIPS OF ALPRAZOLAM TABLETS I.P.0.5 MG total 2300 tablets, 90 strips of ALPRASAFE .05 tablets total 900 tablets, 180 strips of ROLDAL 100-SR tablets total 1800 tablets alongwith drug money of Rs.2,48,000/- was made at his instance.

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3. Learned counsel for petitioner submits that petitioner was not named in the FIR. Petitioner was implicated on the basis of disclosure statement of co-accused-Naveen Kumar, which is not admissible evidence. He submits that alleged recovery was effected from second storey of the residential house, but none of the independent witnesses was joined from the locality while effecting the search and provisions of Section 100(4) Cr.P.C. were thus not complied with.

3.1. Learned counsel for the petitioner contends that co-accused of the petitioner, namely Amit Arora and Naveen Saini have already been granted concession of bail by a co-ordinate Bench of this Court vide orders dated 22.02.2023 and 09.03.2023, respectively.

3.2. Learned counsel for petitioner further submits that there is no other case against the petitioner. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

4. On the other hand, learned State counsel, on instructions from ASI Paramjit Singh, opposes the bail petition. She submits that petitioner has committed a serious offence. The recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act are applicable. If released on bail, there is likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses. Learned State counsel though admits that there is no other case pending against the petitioner.

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 informs that challan was filed and charges were framed on 24.03.2022. Investigation is thus complete and he is not required for custodial interrogation. Out of total 24 witnesses, none has been examined so far. Bail allows an accused to maintain his freedom until his guilt or innocence is determined.

Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has

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already been languishing in jail for the last more than 2 years in preventive custody, being behind bars since 27.07.2021.

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 trial Court 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. 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 not likely to commit any offence while on bail.

9. Petitioner is stated to sole bread-winner and his family members are dependent on him and in his absence, they all are living in sheer penury. He is having clean antecedents and fixed abode, it is unlikely that he poses any flight risk and/or will flee from the trial proceedings.

10. Other two co accused, on whose custodial statement petitioner was arrested, have been accorded concession of bail, while petitioner continues to be in jail.

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, in case 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.

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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 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.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 07, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No