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## IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-56634-2022 (O&amp;M)

Date of decision: 27.07.2023

Sukhpreet Singh @ Captain

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA****Present:-** Mr. Piyush Sharma, Advocate  
for the petitioner.

Ms. Guramrit Kaur, DAG, Punjab.

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**ARUN MONGA, J. (ORAL)**

Petitioner, 21-year old young boy, seeks bail in a case bearing FIR No.89 dated 14.07.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 NDPS Act added later on) (for short 'NDPS Act') at Police Station, Kulgarhi, District Ferozepur.

2. Per prosecution version, on the basis of secret information, co-accused Pappu was apprehended by the Police Party and recovery of 95 grams Heroin was effected from his conscious possession on 14.07.2022. One Dharampreet Singh son of Darshan Singh was also apprehended by the police, who had come to purchase Heroin from the said accused. From his conscious possession also, 5 grams Heroin was recovered. Thereafter, on the basis of disclosure statement of co-accused Pappu, petitioner was nominated in the FIR. Offence punishable under Section 29 of the NDPS Act was added. Petitioner was arrested on 16.07.2022. Recovery of 257 grams Heroin was made pursuant to custodial statement suffered by him.

3. Learned counsel for the petitioner contends that petitioner has been falsely implicated in the present case. He submits that the alleged recovery effected has been planted on the petitioner. He also submits that there was no compliance of mandatory provisions of NDPS Act. There is no likelihood of petitioner tampering

quantity of contraband allegedly recovered is marginally higher than the commercial quantity. He would further urge that per prosecution version, alleged recovery effected from petitioner in present case includes the weight of polythene bag. If the same is excluded and error in weight is taken into account, the alleged recovered contraband would come under the head of 'non-commercial'.

3.1 He further submits that petitioner is in custody since 16.07.2022 and challan has already been presented before the competent Court. Charges have been framed. There are 15 prosecution witnesses but none of the witnesses has been examined till date. Petitioner is not required for custodial interrogation. Nothing is to be recovered. He submits that no other case is pending against the petitioner.

4. On the other hand, learned State counsel on instructions from ASI Balbir Singh opposes the bail petition. She submits that petitioner has committed a serious offence. She further submits that quantity of contraband recovered falls under the commercial quantity. In case petitioner is granted concession of bail, there are chances of his fleeing from justice. She, however, admits that no other case is pending against him.

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

6. Challan is stated to have been presented, charges have been framed. Investigation is thus complete *qua* petitioner. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Allegations against petitioner are a matter of trial at this stage. The case is fixed for prosecution evidence but none of the prosecution witnesses out of 15 witnesses has been examined so far. Since trial has commenced, he is thus not required for custodial interrogation. Commencement/conclusion of the trial is likely to take quite some time. Whereas petitioner has already been languishing in jail for more than 01 year in preventive custody, he being behind bars since 16.07.2022.

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. Petitioner is stated to be 21-year old unmarried person and has lost his livelihood because of his continued incarceration. Further preventive custody will severely jeopardize his career in getting employment. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to the society at large by committing any violent crime. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence and he is not likely to commit any offence while on bail.

9. 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.

10. 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 Magistrate, as the case may be.

11. 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.

12. 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.

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

( ARUN MONGA )  
JUDGE

27.07.2023  
vandana

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