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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-58125-2022 (O&M)****Date of decision: July 20, 2023**

Love Khokhar

....Petitioner

versus

State of Punjab

....Respondent

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

Mr. Virat Rana, AAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.51 dated 07.11.2021, registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') (Section 29 of NDPS Act added later on), at Police Station Kotli Surat Malhi, Police District Batala.

2. Per prosecution version, on 07.11.2021, one Ezik Masih @ Billa was apprehended on the basis of suspicion who threw one envelope on the ground when he saw the policy party. 10 grams of heroin and 100 intoxicant tablets-tramadol hydrochloride contained in the envelope were recovered. Said accused was arrested on the spot. During interrogation, he disclosed the name of petitioner and one Amritpal Singh @ Kaka and the offence under Section 29 of NDPS Act was added. Amritpal Singh @ Kaka was arrested on 09.11.2021. He made confessional statement that he procured intoxicant tablets from one Bhinder Singh in order to sell the same to customers. Said Amritpal Singh alias Kala also disclosed that the intoxicant tablets were kept near the motor in the area of Ranseeke Talan in the room and sale amount of said drug was also kept there. On his disclosure statement, 1110 intoxicant tablets-Alprazolam being commercial quantity and Rs.70,000/- in cash were recovered. On the said disclosure statement of Amritpal Singh, one Bhinder Singh was nominated as accused. Ezik Masih also got recovered one car bearing No.PB-08-CX-6085 Innova

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was added. Earlier petitioner was admitted to interim bail by learned trial Court vide order dated 13.12.2021, awaiting report of FSL and later on when challan was presented on 05.07.2022, he was taken into custody in the present case as the quantity of 100 intoxicant tablets having ingredients of Tramadol Hydrochloride and 1110 intoxicant tablets having ingredients of Alprazolam (135.42 grams) is commercial quantity.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He further submits that petitioner was not named in the FIR and no recovery was effected from him. Disclosure statement of co-accused is not admissible evidence. Petitioner was not present at the spot. Nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses.

3.1. Learned counsel also submits that main accused, namely Ezik Masih alias Billa alias Raja has already been granted concession of bail by a co-ordinate Bench of this Court vide order dated 17.05.2023 in CRM-M-14591-2023. Petitioner deserves parity and is also entitled to be released on bail.

4. On the other hand, learned State counsel, on instructions from ASI Kulwant Singh opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing. There is one more case pending against the petitioner. On a Court query, he submits that challan has already been filed and charges were framed on 19.07.2022. There are total 21 witnesses and none has been examined so far.

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 filed and even charges have already been framed and trial has commenced. Petitioner is not required for custodial interrogation.

He was not named in the FIR and has been arrested on the basis of disclosure

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statement of co-accused. Be that as it may, same shall be evaluated/adjudicated by the Court below after conclusion of trial. Co-accused of the petitioner has already been granted concession of bail vide order dated 17.05.2023 by a co-ordinate Bench of this Court. I am of the view that petitioner deserves to be released on bail on parity.

6.1. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than one year in preventive custody. He 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 except FSL report *qua* contraband. The same has already filed in the trial Court to which accused has no access. There is no probability of its tampering 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. There is no basis for any such apprehension by the prosecution. Trial is likely to take long time as it is proceeding at a snail pace. Out of total 14 witnesses, none has been examined so far.

6.2. 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.

7. Petitioner is stated to be aged 24-year young unmarried boy and has family to look after, who are totally dependent on him and in his absence, they are living in sheer penury. If not released on bail, he will suffer further adversarial impact on his career prospects due to his continued incarceration and may be rendered jobless forever.

8. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed.

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9. Accordingly, petitioner is ordered to be released on bail, in case he is not required in any other case, on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/ learned Duty Judge, as the case may be.
10. 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.
11. 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/disposal of the instant bail petition alone and learned trial Court shall proceed in accordance with law without being influenced with this order.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 20, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No