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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-58766-2022 (O&M)

Date of decision: August 16, 2023

Swaran Singh

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Gurbir Singh Sidhu, 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.03 dated 03.01.2013, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station, Moonak, District Sangrur.

2. Per prosecution version, on 03.01.2013, Inspector Bakhshish Singh along with other police officials were on routine patrolling in villages Balran, Lehal Kalan and Lehal Khurd. At 4:15 p.m., the police party saw one Indigo car in the agricultural fields. On checking, it was found that car was damaged. From its boot, four plastic bags and from the rear seats two plastic bags were recovered. Bags were found containing poppy husk. Total quantity of 120 kg of poppy husk was thus recovered. In course of investigation, co-accused Kulwant Singh and petitioner-Swaran Singh were nominated as accused on 15.01.2013. However, they could not be traced and were declared as proclaimed offenders vide an order dated 16.12.2013. Co-accused Kulwant Singh was later arrested on 11.04.2014, but was eventually acquitted by the trial court vide judgment dated 12.12.2017. Subsequently, petitioner was also arrested on 26.07.2022 and is in custody as an undertrial ever since.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated on the basis of disclosure statement of co-accused. He submits that petitioner was not even named in the FIR. Vide order dated 16.12.2013, learned Court below though declared petitioner as a proclaimed offender, however, all this time, petitioner was residing at his current address without being served of any court notice and was not aware about his being named as an accused in the present case. Nothing is to be recovered from the petitioner and he is not required for

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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.

3.1. Learned counsel also submits that co-accused, namely Kulwant Singh @ Kanta has been acquitted of the charge framed against him by learned trial Court vide order/ judgment dated 12.12.2017 (Annexure P-2). Case of the petitioner viz-a-viz alleged role attributed to him is on even better footing and he is likely to be acquitted, just like his co-accused.

4. On the other hand, learned State counsel, on instructions from ASI Balbir Chand, opposes the bail petition. She submits that petitioner has committed a serious offence. She further contends that huge quantity of contraband, i.e., 120 kg of poppy husk was recovered, which falls within 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 also submits that petitioner is involved in another case under Section 174-A of IPC and is not on bail in that case.

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 06.03.2023. Investigation is thus complete and he is not required for custodial interrogation. Out of total 15 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 already been languishing in jail for the last more than 1 year in preventive custody, being behind bars since 27.07.2022.

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 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

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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 be a 35-year old family person and having fixed abode. It is unlikely that he poses any flight risk and/or will flee from the 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, 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.

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

August 16, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No