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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: July 18, 2023

Sahib Singh @ Vijay

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Ms. Sukhpreet Kaur, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.100 dated 30.09.2021, registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Bholath, District Kapurthala.

2. Per prosecution version, petitioner was apprehended 30.09.2021 by police party at a *nakabandi* (barricade) erected by them and 1,570 intoxicant tablets of prescription drug -tramadol hydrochloride were recovered from him contained in a transparent polythene, thrown away by petitioner, on seeing police officials. Petitioner is in custody since then.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. She further submits that challan was presented way back on 13.03.2022. As per FSL report, weight of each tablet was found to be 98.8 mg, therefore, against total alleged recovery of 1570 tablets, pure content comes to be 155.116 grams, which is non-commercial, as against commercial quantity of 250 grams. She would further contend that there was no compliance of mandatory provisions of NDPS Act as no independent witness/public witness/gazette officer was joined by the police at the time of alleged recovery/seizure of contraband. 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.

4. On the other hand, learned State counsel, on instructions from SI Surjit Singh opposes the bail petition. She submits that petitioner has committed a serious

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offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice. There are two more cases against the petitioner, though she admits that he is on bail in those cases. On a Court query, she submits that challan has already been filed and charges were framed on 03.01.2023. Out of 12 total witnesses, 11 have been examined.

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

6. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. 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. Out of total 12 witnesses, 11 have been examined. In the present case, allegedly 1570 tablets of tramadol hydrochloride were recovered from the possession of petitioner which is stated to be non-commercial quantity. Be that as it may, same shall be adjudicated by the Court below after conclusion of trial.

6.1. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the last more than 1 year and 9 months in preventive custody, being behind bars from 30.09.2021. 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 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.

7. Petitioner is stated to be 27-year old and only bread winner of the family who has added responsibility of his widow mother who has recently undergone Hysterectomy/ uterus removal operation and is under heavy medication. She is totally dependent on him and in his absence, her mother is living in sheer penury.

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8. 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.
9. 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 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 the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 18, 2023

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No