

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-1467-2020 (O&M)

Date of decision: 29.09.2020

Joginder Kaur @ Pammi

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. B.S. Kathuria, Advocate for
Mr. Raman Goklaney, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

CRM-1326-2020

For the reasons mentioned in the application, the same is allowed and the petitioner is exempted from filing certified copy of order dated 21.12.2019 passed by learned Judge, Special Court, Moga.

CRM-M-1467-2020

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for grant of regular bail in case FIR No.58 dated 19.10.2019 registered at Police Station Fatehgarh Panjtoor, District Moga under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act") to which Section 27A of the NDPS Act was added lateron.

Briefly stated, the facts relevant for disposal of the present

petition are that on 19.10.2019 secret information was received by police party headed by SI Jaswinder Singh, Incharge STF Unit, Moga that petitioner and her sister in law Jaswinder Kaur @ Rani @ Rano Bai used to purchase heroin from Nishan Singh alias Satta and sell the same in the area of Fatehgarh Panjtoor and surrounding localities. The above said FIR was registered on the basis of secret information. The petitioner and her sister in law were apprehended on suspicion. As per search conducted in the presence of DSP, STF Moga heroin weighing 180 grams wrapped in polythene was recovered from waist of trouser/salwar of Jaswinder Kaur @ Rani @ Rano Bai and heroin weighing 220 grams was recovered from polythene held by the petitioner in her left hand. The petitioner and her sister in law were arrested and on completion of investigation, report under Section 173(2) of the Cr.P.C. has been filed against them.

The petitioner, who is in custody since the date of her arrest, has filed the present petition for grant of regular bail.

The petition has been contested by learned State counsel in terms of reply filed by way of affidavit of Shubeg Singh, PPS, Deputy Superintendent of Police, Dharamkot, District Moga.

Learned State counsel has also filed custody certificate through e-mail print out of which is taken on record.

I have heard learned counsel for the petitioner and learned State counsel and gone through the relevant record.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. Mandatory provisions of the NDPS Act have not been complied with. No independent witness

was joined during investigation. Recovery of 220 grams of heroin was made on personal search of the petitioner which falls in the category of non commercial category. The petitioner cannot be said to have the knowledge about 180 grams of heroin kept by her sister in law in the bag carried by her and the petitioner cannot be said to be in conscious possession thereof. Rigors of Section 37(1)(b) of the NDPS Act are not applicable qua the petitioner. The petitioner is not involved in any other case under the NDPS Act. Co-accused Jaswinder Kaur @ Rani @ Rano Bai has already been granted regular bail by this Court vide order dated 17.08.2020. The trial is likely to take long time due to restrictions imposed to prevent the infection of Covid-19. No useful purpose will be served by detention of the petitioner in custody during trial. Therefore, the petitioner may be ordered to be enlarged on regular bail.

On the other hand, learned State counsel has submitted that the petitioner is accused of having committed serious offences by keeping commercial quantity of the contraband along with her co-accused and the petitioner does not deserve grant of regular bail. However, learned State counsel has conceded that the petitioner is not involved in any other case under the NDPS Act.

In the present case, 220 grams of heroin was allegedly recovered on personal search of the petitioner while 180 grams of heroin was recovered from bag carried by her sister in law. Debatable questions as to whether the petitioner can be said to have knowledge regarding contents of the bag carried by her sister-in-law and can be treated to have conscious possession thereof are involved in the present case to be resolved by adjudication on merits on the basis of evidence

to be produced during trial. Prima facie rigors of Section 37(1)(b) of the NDPS Act will not apply qua the petitioner.

Keeping in view the facts and circumstances of the case, nature of accusation and evidence against the petitioner, parity with her co-accused Jaswinder Kaur @ Rani @ Rano Bai who has already been granted regular bail by this Court vide order dated 17.08.2020, also the facts that the petitioner is not involved in any other case under the NDPS Act and that heroin allegedly recovered on personal search of the petitioner falls in the category of non commercial quantity coupled with the fact that trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19 but without commenting on the merits of the case, I am of the considered view that the petitioner may be extended the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, the petitioner is granted regular bail subject to the condition that she shall not commit any offence under the NDPS Act after her release on bail and in case of commission of any offence by her under the NDPS Act in future her bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

29.09.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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