

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

**CRM-M No.8789 of 2020 (O&M)
Decided on: 31.07.2020**

Jyoti Bala

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.S. Grewal, Advocate
for the petitioner (through video conferencing)

Mr. Joginder Pal Ratra, DAG, Punjab.
(through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.133 dated 10.12.2019, for offence punishable under Sections 21, 29, 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), registered at Police Station STF Phase-4, Mohali, PS Salem Tabri District Ludhiana.

Counsel for the petitioner has argued that the petitioner is a young lady aged about 22 years and she is the first offender and has a 02 years' old minor child. It is further submitted that as per the allegations, the FIR was registered on the basis of a secret information that the co-accused namely Ravi Kumar and the petitioner – Jyoti Bala, are doing the business of selling narcotics and if a raid is conducted, they can be apprehended. It is also submitted that 160 gms of Heroin was recovered from the present petitioner – Jyoti Bala, which falls in the non-commercial quantity whereas 340 gms of narcotics was

recovered from the co-accused Ravi Kumar, which falls in the commercial quantity.

Counsel for the petitioner has argued that though the police had a prior information because the FIR was registered on the basis of the secret information but despite that the procedure laid down under Section 50 of the NDPS Act was not followed thus, it could not be taken as a chance recovery. It is also submitted that except the secret information, there is nothing on record that the petitioner along with the co-accused Ravi Kumar, were having any meeting of mind for commission of offence and therefore, the recovery from both the accused cannot be taken as a collective recovery in view of the judgment of the Hon'ble Supreme Court "***Amar Singh Ramjibhai Barot vs State of Gujarat***", 2005(7) SCC 550 wherein it has been held that in the absence of any such evidence collected by the police, it cannot be taken as both the accused have committed the offence in conspiracy with each other.

Counsel for the State could not dispute the fact that the FIR was registered on the basis of secret information and therefore, the police has prior information and in such eventuality, the recovery was not a chance recovery and it will be a debatable issue to be decided during the course of trial whether the provisions prescribed under Section 50 of the NDPS Act were complied with or not.

After hearing the counsel for the parties, considering the present situation due to COVID-19 pandemic and also in view of the fact that the recovery effected from the petitioner – Jyoti Bala, is of non-commercial quantity; challan stands presented; the petitioner is the

first offender; she is no more required for any further investigation and the conclusion of the trial will take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his/her furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqa Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he/she is found involved in any other case or misusing the concession of bail, in any manner.

31.07.2020
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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