

**S.No.101**

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

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**CRM-M-26582 of 2020 (O&M)**

**Date of Decision:10.09.2020**

**Mandeep Kaur**

**.....Petitioner**

**Vs.**

**State of Punjab**

**.....Respondent**

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**IN VIRTUAL COURT**  
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**CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present:- Mr. Parneet Singh Baidwan, Advocate for the petitioner.

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**Rajbir Sehrawat, J.(Oral)**

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.119 dated 15.06.2020 registered under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (Section 29 of NDPS Act added lateron) at Police Station Dharamkot, District Moga.

At the outset, it deserves to be mentioned that earlier also the petitioner had filed the similar petition seeking anticipatory bail in this very case. However, when the Court was not inclined to interfere, counsel for the petitioner had sought permission to withdraw the same. Accordingly, the same was dismissed as withdrawn vide order dated 07.08.2020. However, once again, the present second petition has been filed for the same purpose.

The allegations involved in the FIR in the present case, in brief, are that the Police party were on patrolling duty in search of bad element.

At that time, the ASI heading the Police Party received a secret information

that Manjeet Kaur alias Akki wife of Swaran Singh resident of Nurpur Hakima, who is habitual of bringing heroin from outside and selling the same in the area of District Moga; was coming towards Dharamkot side with the consignment of heroin. Believing this secret information, the Police had raised a barrier. When the said Manjeet Kaur reached there, she was intercepted and searched by the Police Party after completing the formalities. During the search, 1.2 Kg heroin was recovered from her. Accordingly, the present FIR has been lodged.

It is submitted by the counsel for the petitioner that the name of the petitioner has wrongly been involved in this case. There is not even the allegations that the petitioner was accompanying the main accused when the recovery was effected from her. There is nothing to connect the petitioner to the recovery, allegedly made from the main accused Manjeet Kaur. She has been named in the present case only on the basis of the alleged disclosure statement of the co-accused Manjeet Kaur. Hence, the petitioner deserves to be granted concession of anticipatory bail.

Notice of motion.

Mr. Ramdeep Partap Singh, DAG, Punjab, accepts notice on behalf of the State.

Learned State Counsel, submits that the name of the petitioner has specifically surfaced during the interrogation. The main accused Manjit Kaur has categorically deposed that the petitioner used to sell heroin brought by her; in retail to the different persons. Accordingly, the petitioner is deeply involved in the matter. Not only this, it is further submitted by the counsel for the State, that the petitioner is already involved in two more

cases of similar nature. Otherwise also, the petitioner is the daughter of the main accused, Manjeet Kaur. Hence, the duo of mother and daughter has been running racket of drug paddling in the area. The custodial interrogation of the petitioner is required to unearth the true dimensions of the crime of the petitioner.

No doubt, the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C; is that the Investigating Officer can arrest the accused even without warrant. Therefore, to ensure that an innocent person is not unduly harassed by the Investigating Agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Coming to the facts of the present case, this Court finds that there are specific allegations against the petitioner qua selling the heroin which is brought from outside by her mother. The petitioner is none other

than the daughter of the main accused Manjeet Kaur. Still further, there are already two more cases of similar nature against the petitioner. Hence, this Court does not find any ex-facie innocence on the part of the petitioner vis-a-vis the allegations levelled against her. Hence, this Court is not inclined to exercise its powers under Section 438 Cr.P.C; so as to protect the petitioner against her arrest. Still further, this Court finds substance in the argument of the learned State Counsel that since the petitioner forms part of a group with her mother, which is, allegedly, indulging in drug trafficking, therefore, the custodial interrogation of the petitioner is required to unearth the true dimensions of the participation of the petitioner in the crime.

In view of the above, finding no merit in the petition, the same is dismissed.

September 10, 2020  
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( RAJBIR SEHRAWAT )  
JUDGE

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|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |