

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

**CRM-M No.48527 of 2019 (O&M)
Date of decision : September 22, 2020**

Balwinder Kaur @ Binder

..... Petitioner

Versus

State of Punjab

..... Respondent

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vidit Bansal, Advocate for the petitioner.

RAJBIR SEHRAWAT, J. (ORAL)

The present petition has been filed by the petitioner under Section 439 Cr.P.C. for grant of bail pending trial in case FIR No.121 dated 26.11.2018 registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Lohian, District Jalandhar Rural.

The allegations against the petitioner are that when the police party was on petrolling duty, at that time, the police intercepted the present petitioner by chance. On seeing the police, the petitioner got perturbed and raising a suspicion, the petitioner tried to slip away from there. On being caught, the police expressed their suspicion qua the petitioner having a contraband material. The police asked the option from the petitioner as to whether she wanted to be searched by the police team or before a gazetted officer, on which she opted to be searched in the presence of the gazetted officer. Then the DSP was called and in his presence, the search of the

petitioner was conducted after completing the requisite formalities. During the search, heroine weighing 255 grams was recovered from the possession of the petitioner. On these allegations, the FIR was registered against the petitioner.

Learned counsel for the petitioner has submitted that the police have not complied with the provisions of the NDPS Act at the time of search and arresting the petitioner. Still further, it is submitted that the quantity, allegedly, recovered from the petitioner, is marginally higher than the commercial quantity. Learned counsel for the petitioner has also submitted that a co-ordinate Bench of this court has granted bail pending trial to a similarly situated accused in another case; despite the fact that the recovery in that case was 270 grams of heroine. Still it is further submitted by the learned counsel for the petitioner that the petitioner is in custody since 26.11.2018.

Notice of motion.

Mr. Pawan Sharda, Sr. DAG, Punjab accepts notice on behalf of the State-respondent.

Learned counsel for State, being instructed by ASI Avtar Singh, has submitted that the search of the petitioner was conducted in the presence of a gazetted officer after complying with all the relevant provisions of law. The commercial quantity of heroine weighing 255 grams has been recovered from the possession of the petitioner. Further, the petitioner has earlier been accused in several other cases, including one NDPS case. Since the recovery effected from the petitioner is commercial in nature, therefore, she does not deserve any concession of bail.

Having heard the learned counsel for the parties, this Court finds that the recovery effected from the petitioner is commercial in quantity. The recovery has been effected by conducting search in the presence of a gazetted officer. Therefore, at this stage, the petitioner cannot be granted bail pending trial.

Although, learned counsel for the petitioner has argued that a co-ordinate Bench had granted bail to another accused in another case despite the recovery of 270 grams of heroine in that case, however, this Court finds this argument as totally irrelevant for the purpose of the present case. Grant of a bail in another case cannot be a precedent for the present case. Every case is to be considered on its facts. In the present case, there is specific allegation against the petitioner qua recovery of commercial quantity of heroine. Hence, this Court does not find any ground to grant the bail pending trial to the petitioner.

Dismissed.

(RAJBIR SEHRAWAT)
JUDGE

September 22, 2020

sarita

Whether speaking / reasoned

Yes

Whether Reportable:

No