

216.

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

CRM-M-28141-2020

Date of decision: 08.01.2021

GEETA

... Petitioner

versus

UNION TERRITORY, CHANDIGARH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anil Sharma, Advocate,
for the petitioner.

Mr. Ashu Mohan Punchhi, Public Prosecutor, UT, Chandigarh,
with Mr. Anupam Bansal, Advocate, for the respondent.

HARI PAL VERMA, J. (Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner, pending trial, in case FIR No.0118 dated 25.05.2020 registered under Section 21 of NDPS Act, 1985 at Police Station Mauli Jagran, Chandigarh.

The present case was registered on a complaint of S.I. Crime Branch, Sector 11, Chandigarh. As per the FIR on 24.05.2020 when the complainant along with other police officials was on patrol duty from Mauli Jagran chowk towards Railway Station Chandigarh and when they reached near Shiv Mandir at about 8.45 PM, he (SI) with the help of Lady Constable Deepa and Lady Constable Pooja nabbed one lady Geeta (the present

petitioner). 260 grams of heroine was recovered from her possession without any licence or permit.

Learned counsel for the petitioner has argued that the petitioner is in custody since 25.05.2020. There is no other case against her except the present one. The police has not adopted the procedure as prescribed under Section 50 of NDPS Act, as search was not conducted in the presence of Magistrate/gazetted officer. He further states that challan in the case has been presented however, charges are yet to be framed and in this manner, trial is not likely to be concluded in the near future.

Learned Public Prosecutor has argued that the recovered quantity is commercial one and as per Section 37 of NDPS Act, there is a bar to grant bail. He refers to a judgment of Hon'ble Supreme Court in ***State of Kerala etc. Versus Rajesh etc.*** in Criminal Appeal No(s).154-157 of 2020, arising out of SLP (Criminal) Nos.7309-7312 of 2019 to support his contention that for having found in possession of contraband as commercial quantity, the petitioner is not entitled to be admitted on bail.

I have heard learned counsel for the parties.

In the judgment i.e. ***State of Kerala Versus Rajesh*** (supra), the accused were found in possession of 10.202 kgs of hashish oil and currency notes worth Rs.13,50,000/-, whereas in the case in hand, the petitioner was found in possession of 260 grams of heroine which is marginally higher than the non-commercial quantity.

The compliance of Section 50 of NDPS Act is questioned in the present case. It is only during the course of trial, the culpability of the petitioner would be established. Noticing the fact that the petitioner has

otherwise not been found involved in any other case under the NDPS Act and the recovered quantity is marginally higher than the non-commercial quantity, this Court deems it appropriate to admit the petitioner on bail. Further because of Covid-19 epidemic, trial is not likely to be concluded in the near future. However, as the petitioner belongs to Delhi, she would be required to be released on bail subject to her furnishing heavy surety including one local surety.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail subject to her furnishing heavy surety and one local surety to the satisfaction of trial Court/Duty Magistrate.

The observations made hereinabove shall not be construed as an expression on the merits of the case and the trial court shall decide the case on the basis of available material.

(HARI PAL VERMA)
JUDGE

08.01.2021
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No