

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

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**CRM-M-4783-2022
Decided on : 13.09.2022**

Rekha

. . . Petitioner(s)

Versus

State of Haryana

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Raman Chawla, Advocate
for the petitioner(s).

Mr. Ashish Yadav, Addl. AG, Haryana.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Rekha, who has been booked for having committed the offences punishable under 21(c)/61 of the NDPS Act, 1985, in FIR No. 478, dated 25.06.2021, registered at Police Station Sadar Hisar, District Hisar.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the case. He submits that prosecution has shown recovery of 505 grams of heroin (chitta) from the conscious possession of the petitioner, who is a young woman of 26 years of age. He further submits that there is no other case registered against the petitioner and she is inside jail since 25.06.2021.

Learned counsel for the petitioner further submits that recovery of heroin from the petitioner is almost double to the non-commercial quantity, therefore, same cannot be termed as heavy quantity of heroin possessed by the petitioner. Besides this, learned Court below has failed in considering the totality of circumstances and no weightage has been given to

the fact that petitioner is not involved in any other case including under the NDPS Act. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

On the other hand, learned State counsel while opposing the submissions made by learned counsel for the petitioner submits that offence under the NDPS Act, is serious offence. He further submits that since the quantity of contraband recovered from the possession is commercial quantity, therefore, bar of Section 37 of NDPS Act would be applicable in the case of the petitioner. Thus, she is not entitled for the concession of bail.

While accepting the total period of custody of the petitioner being more than a year, learned State counsel has also informed this Court that after presentation of challan, charges have been framed and now the case is fixed for 29.09.2022, for recording of statements of the prosecution witnesses and total 29 prosecution witnesses are to be examined.

To come out of the bar of Section 37 of the NDPS Act, learned counsel for the petitioner refers to the vernacular of the recovery memo dated 24.06.2021 and submits that preparation of the recovery memo, upon which prosecution is relying strongly, creates doubt in the story of the prosecution and that may also create a strong doubt in the mind of the trial Court at the time of decision of the case. Learned counsel for the petitioner points out that the recovery memo typed in Hindi mentions FIR No. 478 is registered on 25.06.2021, but in bottom part mentions date as 24.06.2021, which is signed by the witnesses as well as the petitioner. He further submits that had it been recovered on 24.06.2021, said fact would have been mentioned in the relevant details of the recovery memo, which is absent.

Be that as it may, in view of the submissions made by learned

counsel for the petitioner and especially while referring to the vernacular of the recovery memo dated 24.06.2021 (Annexure P-1), undoubtedly, it would be a question before the trial Court to decide whether recovery memo is false or prepared antedated ?

After considering the submissions of both the sides, and the totality of circumstances, and perusing the record with their able assistance, I find that there is some substance in the contentions raised by the counsel for the petitioner.

Accordingly, the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to her furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation 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 evidence available on record.

(SANJAY VASHISTH)
JUDGE

September 13, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No