

216

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

CRM-M-34787-2022

Date of Decision: September 07, 2022

SANDEEP KAUR @ SHIPA**....Petitioner****Versus****STATE OF HARYANA****....Respondent****CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**

Present: Mr. Kuldeep Singh Siwach, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

AMAN CHAUDHARY, J.(ORAL)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in respect of FIR No.112 dated 08.04.2022 under Section 21(b), 27-A of Narcotic Drugs and Psychotropic Substances Act 1985, registered at Police Station City Ratia, District Fatehabad.

The brief facts of the case are that on 08.04.2022, a police party headed by SI Mahender Singh apprehended the petitioner Sandeep Kaur @ Shipa near Police Station City Ratia, on the basis of suspicion. During search 65 grams of Heroin, containing in a plastic transparent pouch was effected from a steel Dolli carried by her.

Learned counsel for the petitioner submits that though the petitioner was apprehended at the spot and 65 grams of heroin was recovered from her but the same is non-commercial quantity as per the Schedule in the NDPS Act.

Learned counsel for the petitioner further submits that the petitioner is a lady; has a minor daughter and she has been falsely implicated in the present case on account of the fact that she was earlier involved in NDPS cases in the same Police Station. He further submits that there is no independent witness joined at the time of recovery despite the fact that the recovery is alleged to have been taken place in abadi area during the day at 8.30 AM. He further submits that even the challan was filed without the FSL report having been received, therefore it is an incomplete challan. He further submits Section 37 is also not applicable in the present case in view of the fact that the recovery is non-commercial.

Learned counsel for the petitioner further relies upon the grant of bail to co-accused in this present case, granted by the Co-ordinate Bench of this Court in case CRM-M No.23340 of 2022 wherein the rigors of Section 37 of NDPS Act not being applicable was mentioned on account of quantity recovered being less than commercial. Learned counsel for the petitioner submits that the co-accused was granted bail on the ground of his custody of about two months.

Learned State counsel, however, opposes the grant of bail on the ground that the petitioner was apprehended at the spot and six more criminal cases have been registered against her. Learned counsel further submits that challan has been presented.

Learned counsel for the petitioner in rebuttal submits that out of the six cases mentioned by the learned State counsel, in two cases, the petitioner has been acquitted and in the rest of four cases, she is on regular bail.

Heard, learned counsel for the parties.

Hon'ble Supreme Court of India in the case of "**Maulana Mohd. Amir Rashadi Vs. State o UP and another**", **reported as 2012 (2)**

SCC 382, held as under:-

"As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

Considering the peculiar facts and circumstances of the case; the aforesaid judgments and the fact that the petitioner is a lady; has a minor daughter; quantity allegedly recovered from the petitioner is non-commercial; no independent witness was joined, despite the alleged recovery having been effected from a place in the abadi area at 8.30 AM; it is also the common case of the parties that the petitioner is in custody for last 5 months; though the challan has been filed, however, charges are yet to be framed; the trial is yet to commence; there are total 16 prosecution witnesses, no useful purpose would be served by keeping the petitioner in custody further, thus this petition deserves to be allowed.

Resultantly, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurise/ intimidate the prosecution witnesses.

3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
4. The petitioner shall not commit an offence similar to the offence of which, she is an accused, or for commission of which she is suspected of.
5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
6. The petitioner shall not in any manner misuse his liberty.
7. Any infraction shall entail in withdrawal of the benefit granted by this Court.

This Court makes it clear that the observations made herein above are limited for the purposes of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

07.09.2022

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**(AMAN CHAUDHARY)
JUDGE**

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No