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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-9963-2023 (O&M)

Date of decision: 18.08.2023

Rahma

....Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Tarun Singhal, Advocate for petitioner.

Mr. Dhruv Dayal, Additional A.G., Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks his release as an undertrial in a case bearing FIR No.229 dated 02.05.2022, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Zirakpur, District SAS Nagar (Punjab).

2. Per FIR, petitioner was apprehended on suspicion and 300 grams of Heroin was recovered from him. He was arrested from the spot and has been in custody since 02.05.2022.

3 Learned counsel for the petitioner further submits that petitioner has been falsely implicated in this case. He further contends that in the present case mandatory provisions of NDPS Act were not complied with. He further urges that no independent witness was joined by the police party. Petitioner is not involved in any other case. Alleged recovery has been planted on him.

3.1. Learned counsel for the petitioner submits that per FSL report, of the entire alleged quantity recovered, merely 34% heroin was found in the parcel sent for forensic test. He further submits that, in any case, alleged contraband recovered from the petitioner was weighed along with plastic bag and it is thus that the total weight is stated to be 300 grams, which too is marginally higher than non-commercial quantity. The commercial quantity of heroin starts from 250 grams and in this case, the weight of plastic bag is also included in 300 grams of weight. There is every chance that recovery may fall in non-commercial quantity.

3.2 He also submits that nothing is to be recovered from the petitioner and he is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

4. On the other hand, learned State counsel, on instructions from SI Ajay Kumar, opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of her fleeing from justice as she is a foreign national. Learned State counsel further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of NDPS Act would be attracted in this case. He however, admits that no other case is pending against her.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. On a Court query, learned State counsel submits that challan was filed and charges were framed. Investigation *qua* the petitioner is complete. Petitioner is thus not required for custodial interrogation. Commencement/conclusion of trial will take some time to conclude. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for the last more than 01 year and 03 months in preventive custody, she being in custody since 02.05.2022.

7. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if he is let out, she may either tamper with evidence and/ or influence witnesses. There is no documentary evidence and it is more in the nature of FSL report *qua* contraband, already filed in the trial Court to which accused has no access. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced, even if there is any such apprehension by the prosecution.

8. Be that as it may, offence allegedly committed by petitioner is of non-violent nature and in that sense her release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioner are matter of

trial. At this stage, there appears to be a reasonable ground that petitioner may not be guilty of the alleged offence. She is unlikely to commit any offence while on bail.

9. Petitioner is stated to be a young lady aged 28 years who has already lost her livelihood due to prolonged incarceration. She has clean antecedents and not likely to flee from trial proceedings.

10. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

11. Accordingly, petitioner is ordered to be released on bail, if not required in any other case, on her furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where her case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be. Petitioner shall provide her location to the Investigating Officer fortnightly on the number to be provided by the IO and shall present herself available in case as and when required by the Investigating officer.

12. Apart of other conditions to be imposed by learned releasing Court, petitioner shall surrender her passport with learned trial Court, if not already surrendered.

13. In case, petitioner is found to be involved or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of her bail in the instant case.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed without being influenced with this order.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

18.08.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No