

216 (two cases)**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-10713 OF 2022 (O&M)
DATE OF DECISION: 11.09.2023****Leela Budda****...Petitioner****Versus****State of Punjab****...Respondent****CRM-M-17473 OF 2023 (O&M)****Luxmi @ Lakshmi****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Mr. Jatinder Kumar Kamboj, Advocate and
Mr. Sunny K. Singla, Advocate
For the petitioner(s).

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Vide this common order, above-mentioned two bail petitions arising out of same FIR are being disposed of. For brevity, recitals are taken from CRM-M-10713-2022.

2. After being declined bail by the trial Court, petitioners before this Court seek their release as undertrials in a case bearing FIR No.52 dated 23.03.2021, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Lalru.

3. Per FIR, on 23.03.2021, SI Salinder Kumar along with other police officials were on routine patrolling duty though on a private vehicle. When they reached Ambala-Chandigarh highway near ITI Chowk, Lalru, at about 12:40 pm, two women having blue and green coloured bags, were spotted walking from opposite side, who appeared to be of Nepali origin. They were

asked to stop but instead they tried to flee by crossing over the highway on the other side. They were apprehended on the basis of suspicion. After completing the formalities, both the ladies (petitioners herein) were searched separately. From green bag carried by petitioner Luxmi, 6 kgs of Opium was recovered, whereas from red bag carried by petitioner Leela, 5 kg Opium was recovered. The contraband so recovered was sealed and seized. From personal search of both the accused, Rs.50 of Nepali currency and Rs.450/- of Indian currency with an identity card of Nepal were recovered. Same were also taken into possession vide separate parcels. FIR was registered. Petitioners are in custody since then.

4. Learned counsels further contend that mandatory provisions of NDPS Act were not complied with. They further contend that no independent witness was joined by the police party. Petitioners have thus been falsely implicated in the present case. It is further contended that they are not involved in any other case.

4.1 Learned counsels for the petitioners would argue that in reality nothing was recovered from petitioners. Their thumb impressions were obtained by the police on various documents in police station. It is further contended that both the petitioners do not know how to read or write Hindi, Punjabi or English language.

4.2 Learned counsels also submit that nothing is to be recovered now from the petitioners and they are not required for further custodial interrogation since challan has already been presented. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

5. On the other hand, learned State counsel opposes the bail petition. He submits that in case petitioners are granted concession of bail, there are chances of their fleeing from justice, since petitioners are natives of Nepal. 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.

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

7. Learned State counsel, on instructions from ASI Salinder Singh, submits that challan was presented on 10.08.2021 and charges were framed way back on 29.11.2021. Investigation *qua* petitioners is complete and thus they are not required for custodial interrogation. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. There are total 12 witnesses and only 07 witnesses have been examined till date. Conclusion of the trial is likely to take quite some time as it is proceeding at a snail pace. Whereas, petitioners have already been in jail for more than 02 years and 05 months, being in custody since 23.03.2021.

8. Petitioners are being kept in preventive custody merely on an unfounded suspicion that if let out, they 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 have 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.

9. Offence allegedly committed by petitioners is of non-violent nature and in that sense their release on bail is not a threat to society at large by committing any violent crime. In any case, allegations against petitioners are matter of trial. At this stage, there appears to be a reasonable ground that petitioners may not be guilty of the alleged offence. They are unlikely to commit any offence while on bail.

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 petitioners in further preventive custody.

11. Accordingly, petitioners are ordered to be released on bail in the instant case on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/Duty Judge, as the case may be, with the following added conditions, in addition the normal ones to be imposed by the Court below :

- (i) petitioners shall furnish their permanent addresses and contact number to the Court and in case, they change their address or contact number, they shall inform trial Court;
- (ii) petitioners shall not leave country except with prior permission of trial Court;
- (iii) petitioners will not commit any similar offence;
- (iv) Petitioners shall physically report to the IO every fortnightly and make themselves available as and when otherwise required by the Investigating officer.

12. In case, petitioners are found to be involved or get involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.

13. 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.

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

15. A photocopy of the order be placed on the file of the connected case.

SEPTEMBER 11, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No