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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-10611-2023
Date of Decision: 04.05.2023

Sukhdeep Kaur @ Golu

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vinod Bishnoi Godara, Advocate
for the petitioner.

Mr. Rupinder Singh Jhand, Addl. A.G., Haryana.

HARSH BUNGER J. (ORAL)

Prayer in the present petition, filed under Section 439 of the Code of Criminal Procedure, is for grant of regular bail to the petitioner in case FIR No.296 dated 11.09.2022, under Sections 21 (b) and 27-A, of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station City Ratia, District Fatehabad.

2. Upon issuance of notice, status report by way of an affidavit of Shukarpal Siraswal, H.P.S., Deputy Superintendent of Police, Fatehabad, District Fatehabad (Haryana) on behalf of respondent/State has been filed which is already on record.

3. Custody certificate dated 30.04.2023 of the petitioner has been filed by learned State counsel in Court today, which is taken on record,

subject to all just exceptions.

4. Brief facts of this case are that on 11.09.2022, ASI Harpal Singh along with fellow employees was going towards Sanjay Gandhi Chowk from Fatehabad Road Ratia near Luhari Chowk for patrolling duty, a young boy coming from the 16 feet street seeing the police vehicle turned back and started walking and on the basis of suspicion he was apprehended by the police officials. On asking, he disclosed his name Manpreet Singh @ Money (co-accused) and after complying with necessary procedure, search was conducted and 08 grams of heroin was recovered from co-accused-Manpreet Singh @ Money. During his interrogation, Manpreet Singh @ Money (co-accused) suffered a disclosure statement, wherein he stated that his sister-in-law (Sukhpreet Kaur @ Golu) allured him to sell the heroin and earn the huge profit and in consequence Manpreet Singh @ Money (co-accused) purchased 08 grams of heroin for Rs.10,000/- from Sukhpreet Kaur @ Golu (present petitioner). Accordingly, the present case FIR was registered.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case only on the basis of disclosure statement of co-accused (Manpreet Singh @ Money). Learned counsel further submits that the petitioner has no link with the alleged recovery effected from the possession of co-accused (Manpreet Singh @ Money). It is submitted that the alleged recovered contraband i.e. 8 grams of heroin, falls under the category of non-commercial quantity. It is stated that no alleged recovery has been effected from the petitioner and she is not involved in any other case. Learned counsel next submits that co-accused (Manpreet Singh @ Money) has already been granted the concession of

regular bail vide order dated 12.10.2022, passed by learned Additional Sessions Judge, Fatehabad (Annexure P-3). It is further submitted that the petitioner has been in custody since 11.09.2022, the investigation of this case is complete and challan has already been presented. Learned counsel next submits that the trial would take some time and the petitioner is ready to abide by all the conditions as may be imposed by this Court or by the trial Court; accordingly prayer for grant of regular bail is made.

6. Learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness of the offence. It is submitted by learned State counsel that FIR is also registered under Section 27-A of the Narcotic Drugs and Psychotropic Substances Act, hence Section 37 of NDPS is attracted. However, it is not disputed that the petitioner has been in custody for 7 months and 19 days (as on 30.04.2023) and challan has already been presented. It is also not disputed that the alleged recovered contraband falls under the category of non-commercial quantity.

7. I have heard learned counsel for the parties and perused the paper book, status report as well as custody certificate filed by learned State counsel, in Court today.

8. As per the FIR, the alleged recovery in this case is 8 grams of heroin and the same is intermediate quantity. Hon'ble the Apex Court in *Sami Ullaha vs Superintendent, Narcotic Central Bureau 2009(1) RCR (Crl) 40*, has observed that where intermediate quantity of narcotic is involved, it may not be justified to apply the rigors of the provisions of Section 37 of the NDPS Act, relating to grant of bail. It was further observed therein that a person's liberty is protected in terms of Article 21 of the Constitution of India and when two views are possible,

the view which leans in favour of the accused must be favoured.

9. In the instant case, the learned Additional Sessions Judge, Fatehabad has declined the relief of bail to the petitioner primarily on the ground that the allegations against the petitioner are for the alleged commission of offence under Section 27-A of the NDPS Act. In ***Rakesh Singh @ Rakesh Kumar Singh vs The State of West Bengal 2021(1) CaLL.T. 308***, a Division Bench of Calcutta High Court, while considering a bail petition involving Section 27-A of the NDPS Act, has observed as under:-

"8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, prima facie we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word "trafficking" connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our prima facie opinion, not fall within the mischief of Section 27A of the NDPS Act. In this connection, one may refer to a decision of the Bombay High Court rendered on October 7, 2020 in Criminal Bail Application (Stamp) No.2386 of 2020 (Reha Chakraborty v. The Union of India State of Maharashtra).

9. Fifthly, we also notice that none of the 53 criminal cases pending against the petitioner is under the provisions of the NDPS Act. Though, the petitioner has criminal antecedents,

there is no history of the petitioner dealing in narcotics in contravention of the provisions of the NDPS Act."

In the above referred case, the Calcutta High Court vide its order dated 24.11.2021 allowed the bail application and the said order granting bail was further challenged by the State of West Bengal before the Hon'ble Apex Court, however, the order granting bail by the Calcutta High Court was maintained. Hon'ble the Apex Court in ***State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh's 2022(10) Scale 483***, while declining to interfere in the bail order granted by the Calcutta High Court, especially in relation to Section 27-A of the NDPS Act, observed as under: -

"16.4. Hence, suffice it to observe for the present purpose that in the given set of facts and circumstances, the High Court has rightly found that applicability of Section 27A NDPS Act is seriously questionable in this case. That being the position; and there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigors of Section 37 NDPS Act do not apply to the present case. "

10. Drawing support from the observations made by the Hon'ble Apex Court in ***Rakesh Singh @ Rakesh Kumar Singh's case (supra)*** and upon consideration of the facts and circumstances of the instant case, at this stage, the applicability of Section 27-A of the NDPS Act, in the present case is a questionable and a debatable issue, especially when there is no other case against petitioner.

11. As per the custody certificate dated 30.04.2023, the petitioner has been in custody since 11.09.2022. Investigation in this case is

completed, challan already stands presented, thus, the conclusion of the trial is likely to take some time.

12. In *Union of India v. KA. Najeeb*, 2021(2) RCR (Criminal) 145, Hon'ble Supreme Court observed as under:

"13. Even in the case of special legislations like the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS") which too have somewhat rigorous conditions for grant of bail, this Court in Paramjit Singh v. State (NCT of Delhi), (1999) 9 sec 252, Babba alias Shankar Raghuman Rohida v. State of Maharashtra, (2005) 11 SCC 569 and Umarmia alias Mamumia v. State of Gujarat, (2017) 2 SCC 731 enlarged the accused on bail when they had been in jail for an extended period of time with little possibility of early completion of trial. The constitutionality of harsh conditions for bail in such special enactments, has thus been primarily justified on the touchstone of speedy trials to ensure the protection of innocent civilians... "

13. Keeping in view the aforementioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to her furnishing bail/surety bonds to the satisfaction of the Trial Court/Illaq Magistrate/Duty Magistrate concerned. However, the concerned Station House Officer shall be informed about the release of petitioner and the petitioner shall inform the concerned Station House Officer about her address at which she intends to reside during the pendency of case and any change in the address shall also be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish her telephone number to the concerned Station House Officer. She would also furnish her undertaking to the effect that she will not indulge in any illegal activity,

during the pendency of the trial.

14. In addition, the petitioner (or any one on her behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law, in case of the absence of the petitioner from trial without sufficient cause.

15. Nothing expressed hereinabove shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

16. The petition is accordingly disposed of.

04.05.2023
Himani

(HARSH BUNGER)
JUDGE

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|--------------------------------|--------|
| 1. Whether speaking/reasoned : | Yes/No |
| 2. Whether reportable : | Yes/No |