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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15629-2023 (O&M)

Date of decision: July 17, 2023

Malkit Kaur @ Keepo

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Karanjeet Singh Brar, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.115 dated 08.08.2022, registered under Sections 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Kot Ise Khan, District Moga.

2. Per prosecution version, on the basis of secret information, petitioner was apprehended on the basis of secret information and 210 loose intoxicant tablets of Etizolam were recovered from her possession. Petitioner is in custody since 08.08.2022.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. He submits that entire alleged contraband was not sent for forensic examination since recovery was without batch number and loose tablets were recovered. He submits that no independent witness was joined. He submits that contraband allegedly recovered from the petitioner is prescription medicine, i.e. Etizolam, which is required for patients suffering from chronic depression. Medical report is annexed as Annexure R-1 filed with affidavit dated 29.05.2023 of Deputy Superintendent of Police, Dharamkot, District Moga, which also reflects that petitioner has been under treatment of a specialized psychiatrist. As regards other cases, petitioner is on bail in those.

4. On the other hand, learned State counsel, on instructions from ASI Major Singh opposes the bail petition. She submits that petitioner has committed a serious

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offence. In case, petitioner is granted concession of bail, there are chances of her tampering with evidence and/ or influencing witnesses. She submits that there are total 11 witnesses and none has been examined yet. Petitioner is involved in three more cases, out of which, in two she is on bail and in one case she was convicted and has undergone sentence on 12.03.2019.

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

6. Challan is stated to have been filed and even charges were framed and trial has commenced, petitioner is not required for custodial interrogation. Out of total 11 witnesses, none has been examined so far. The trial is proceeding in snail pace.

6.1. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if she 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.

7. In this case, petitioner was apprehended on the basis of secret information. Entire alleged contraband was not sent for forensic examination. No independent witness is stated to have joined. Contraband allegedly recovered from the petitioner is prescription medicine, i.e. Etizolam, which is required for patients suffering from chronic depression. Medical report is annexured as Annexure R-1 also reflects that petitioner has been under treatment of a specialized psychiatrist. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Whereas, petitioner has already been in jail for more than 22 months in preventive custody, being behind bars since 08.08.2022.

8. Petitioner is stated to be 43-year old, mother of 3 children who are being deprived of her natural care, protection and affection as her husband has to go out for work to earn livelihood. There is no other to look after them in her absence.

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9. 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.
10. Accordingly, petitioner is ordered to be released on bail 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.
11. 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.
12. 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.
13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 17, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No