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

CRM-M-16115-2023 (O&amp;M)

Date of decision: 22.08.2023

Sunita

....Petitioner

versus

State of Punjab

...Respondent

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

Ms. Guramrit Kaur, DAG, Punjab.

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**ARUN MONGA, J. (ORAL)**

After being declined bail by the trial Court, petitioner before this Court seeks her release as an undertrial in a case bearing FIR No.0026dated 10.02.2023, registered under Section 21 (b), 25 and 27-Aof the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), (Section 29 of NDPS Act added later on) at Police Station, Dinanagar, District Gurdaspur.

2. Per prosecution case, on 10.02.2023, on the basis of secret information, a *naka* (barricade) was erected. Petitioner and her husband, going a two wheeler-scooty, were apprehended on suspicion. Allegedly, 100 grams of heroine and Rs.1,50,000/- drug money were recovered from boot of the scooty, which was being driven by husband of the petitioner while she was sitting on it as a pillion. On the basis of recovery, FIR was registered. Petitioner and her husband both were arrested from the spot. She is in custody ever since.

3. Learned counsel for the petitioner further submits that alleged contraband was recovered from boot of the scooter and petitioner had no knowledge of the same being there. Petitioner has been falsely implicated. In any case, her husband who was riding the scooter is already behind bars. Alleged recovery of contraband is non-commercial. He further submits that mandatory provisions of NDPS Act were not complied with. No independent witness was joined by the police party. He further submits that without any proof of it being drug money and the recovery of Rs.1,50,000/-

has been shown/fastened under Section 27-A of NDPS Act by the prosecution.

3.1. He also submits that nothing is to be recovered from the petitioner and she is not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. He further submits that no other case is pending against the petitioner. He submits that FSL report is still awaited and in all likelihood, the trial will result in acquittal of the petitioner

4. On the other hand, learned State counsel opposes the bail petition. She submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of her fleeing from justice. Learned State counsel further contends that Section 27-A of NDPS Act relates to financing of the illicit trafficking of drugs and rigors of Section 37 of NDPS Act would be attracted in this case. She 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, on instructions from ASI Kulwinder Singh, submits that challan was presented on 04.08.2023. Investigation is thus complete *qua* petitioner, she is not required for custodial interrogation. Allegations against her are matter of trial at this stage. There are 22 prosecution witnesses. Commencement/conclusion of the trial is likely to take quite sometime. 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 06 months in preventive custody, being in custody since 10.02.2023.

7. 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 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 maynot be guilty of the alleged offence. She is unlikely to commit any offence while on bail.

9. Petitioner is stated to be 35-year old married woman having a family comprising of two minor children to look after, who are living in sheer penury and being deprival of parental care as both parents are in custody *qua* the same recovery. Having clean antecedents and fixed abode, it is unlikely that she poses any flight risk and/or will 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.

12. 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.

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.

(ARUN MONGA)  
JUDGE

22.08.2023  
vandana

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