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

CRM-M-17429-2023 (O&M)
Date of Decision: 01.06.2023

LAXMI @ LACHHMI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Angraze Singh Dhindsa, Advocate
for the petitioner.

Mr. M.S. Tiwana, A.A.G., Punjab.

HARSH BUNGER, J. (ORAL)

CRM-25263-2023

This is an application for placing on record the rejoinder by way of an affidavit of the applicant-petitioner along with Annexures A-1 to A-6.

Criminal Misc. Application is allowed, as prayed for. Annexures A-1 to A-6, are taken on record, subject to all just exceptions.

CRM-M-17429-2023

Petitioner has filed this petition under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.16, dated 27.02.2023, under Sections 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS" Act) (Section 29 of the NDPS Act, added later on), registered at Police Station Jhulkan, District Patiala (Annexure P-1).

2. Upon issuance of notice in this case, the status report by way of an affidavit dated 25.04.2023 of Sh. Gurdev Singh Dhaliwal, P.P.S., Deputy Superintendent of Police, Circle Rural, District Patiala, on behalf of

respondent-State of Punjab, has been filed, which is already on record,

3. Briefly, as per prosecution story, on dated 27.02.2023 ASI Surinder Singh alongwith fellow employees was present on Patiala-Pehowa Main Road in the area of Village Harigarh in connection with checking of vehicles and in search of bad elements. Then at about 09:20 p.m., one Motorcycle Rehri came from Haryana side driven by one trimmed hair person, who on seeing the police party tried to turn back said Motorcycle Rehri and on the basis of suspicion, he was apprehended. His name and address was verified as Uma Shanker son of Tulsi Ram. An intimation to police station was given for sending competent Investigating Officer, upon which Sub Inspector Gurjeet Kaur reached at the spot and as per procedure and after serving notice under Section 50 of the NDPS Act, a plastic bag lying in the said Motorcycle Rehri was searched and from the same, 20 kgs. *ganja* was recovered. Accused was arrested after adopting the procedure.

4. During the course of investigation / interrogation of accused Uma Shanker, he disclosed that he used to take this *Ganja* from Pahowa (Haryana) at the asking of accused Lachhmi (petitioner) and she used to handover to him Rs.4,000/- to Rs.5,000/- per round. On the basis of disclosure of Uma Shankar, accused Lachhmi (petitioner) was nominated as an accused in this case and offence under Section 29 of the NDPS Act was added on 01.03.2023.

5. Apprehending her arrest in this case, the petitioner approached the Court of Judge, Special Court, Patiala seeking grant of pre-arrest bail by filing an application, however, the same was declined by the learned Judge, Special Court, Patiala, vide order dated 17.03.2023. Accordingly, the petitioner has filed this petition under Section 438 Cr.P.C. seeking

anticipatory bail.

6. Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case and she has no concern with the alleged crime and neither any recovery was effected from her as she was not present at the spot. It is submitted that the petitioner has been nominated as an accused on the basis of the disclosure statement of co-accused Uma Shanker, which is not admissible in the evidence. Learned counsel for the petitioner submits that the petitioner is ready to join the investigation and to comply with other conditions as may be imposed by this Court or by the trial Court. Accordingly, prayer for grant of anticipatory bail has been made.

7. Per contra, learned State counsel has opposed the prayer for grant of anticipatory bail to the petitioner on account of seriousness of the offence. Learned State counsel has submitted that co-accused Uma Shanker was apprehended with 20 kgs. *ganja* and said Uma Shanker suffered a disclosure statement during interrogation that he used to take this *Ganja* from Pehowa (Haryana) at the asking of accused Lachhmi (petitioner) and she used to handover to him Rs. 4,000/- to Rs.5,000/- per round. It is submitted that the petitioner is a habitual offender and there are six other cases under NDPS Act against her. It is submitted that the custodial interrogation of the petitioner is required for unearthing the nexus of drug peddling which is ruining the youth of the country. Accordingly, prayer for dismissal of the petition has been made.

8. I have heard learned counsel for the parties and also gone through the paper book as well as the status report filed on behalf of the State of Punjab.

9. In this case, the petitioner has been nominated as an accused

upon the disclosure statement of co-accused Uma Shanker, who was apprehended with 20 kgs. *ganja*. As regards, the submission of the petitioner that the statement of the co-accused is not admissible in evidence, suffice it to say that as per the Section 30 of the Evidence Act, when more than one persons are being tried jointly for the same offence and a confession made by one of such persons affecting himself and other of such person, is proved then the Court may take into consideration such confession as against such other person as well as against the person who make such confession. Even otherwise, such statement can certainly be looked into for providing lead in the investigation.

10. Further, a perusal of the FIR would reveal that the petitioner along with co-accused (Uma Shanker) have been booked for offences under Section 20 and 29 of the NDPS Act and in this regard Section 37 of the NDPS Act would be relevant and same reads as under:

S.37 “Offences to be cognizable and non-bailable. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for

the time being in force on granting of bail.”

A perusal of the abovesaid provision contained under Section 37 of Act, clearly provides that no person accused of an offence involving commercial quantity, shall be released on bail or on his own bond unless the public prosecutor has been given an opportunity to oppose the application for such release and where the public prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any such offence while on bail.

11. In the instant case, there is nothing on record to enable this Court to record *prima facie* satisfaction for believing that petitioner is not guilty of the offence or that she will not commit any offence while on bail; moreso, when she is involved in six other cases under the NDPS Act.

12. Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from custodial interrogation.

13. In case of State represented by the ***C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268***, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

14. Custodial interrogation of the petitioner is definitely required for complete and effective investigation to find out as to from where she had procured the narcotic substance and who all are involved in this crime. In case custodial interrogation of the petitioner is denied to the investigating

agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

15. Keeping in view the above facts and circumstances, the petitioner in the present case is not entitled for grant of anticipatory bail as no exceptional circumstance has been brought forth in that regard. Accordingly, the present petition under Section 438 Cr.P.C. seeking grant of anticipatory bail to the petitioner in case FIR No.16 dated 27.02.2023, under Sections 20 of the NDPS Act (Section 29 of NDPS Act, added later on) registered at Police Station Jhulkan, District Patiala; is dismissed.

16. Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail petition.

17. All pending application/s, if any, shall also stand closed.

June 1st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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