

CRM-M-23830-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 28.08.2023

Rani Kaur

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Jashandeep Singh Sandhu, Advocate for the petitioner.

Ms. Guramrit Kaur, DAG Punjab.

ARUN MONGA, J. (Oral)

After being declined bail by learned trial Court, petitioner before this Court seeks her release as an undertrial in case bearing FIR No.170 dated 28.11.2021 registered under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, Dhanaula, District Barnala, Punjab.

2. Per prosecution version, on the 28.11.2021, Inspector Baljit Singh along with other police officials received information that petitioner along with other co-accused have formed a gang and used to supply heroin in the area of Districts Mansa-Barnala-Bathinda. On the basis of aforesaid secret information, a raid was conducted and the petitioner along with co-accused was apprehended within the jurisdiction of Dhanaula. From their possession, 400 grams of heroin was recovered. FIR was registered. Petitioner has been in custody since 28.11.2021.

3. Learned counsel for the petitioner submits that mandatory provisions of Sections 42, 50, 52 and 55 of the NDPS Act have not been complied with. Learned counsel further urges that alleged recovery was not effected from the exclusive and conscious possession of petitioner. He further submits that no

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independent witness was joined while effecting the search and provisions of Section 100(4) Cr.P.C. were thus not complied with.

3.1 He further states that co-accused have been accorded concession of bail by coordinate Bench of this Court vide orders dated 14.03.2023, 28.04.2023 and 22.09.2022 passed in CRM-M-51144-2022, CRM-M-51466-2022 and CRM-M-20949-2022 respectively while the petitioner, whose case is on much better footings, is languishing in jail, he contends. He further submits that petitioner has been implicated on account of fact that her son is too being involved in the present FIR. False implication of petitioner, thus, cannot be ruled out. Further submits that there is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses

4. On the other hand, learned State counsel, on instructions from ASI Nirmal Singh, 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. She further contends that recovery of contraband falls under commercial quantity and rigors of Section 37 of the NDPS Act would be attracted in this case. She further submits that two more cases of similar nature are pending against the petitioner. Out of said cases, she is on bail only in one case. She is thus, a habitual offender.

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 submits that challan was presented on 13.05.2022 and charges were framed on 22.07.2022 in the present case. Investigation is thus complete *qua* petitioner, she is not required for custodial interrogation. Out of total 18 witnesses, only 03 have been examined so far. Conclusion of trial is still likely to take long time as it is proceeding at snail pace. Allegations against petitioner are a matter of trial at this stage. Bail allows an accused to maintain her freedom until her guilt or innocence is determined.

Whereas, petitioner has already been languishing in jail for the past more than 01 year and 09 months, being behind bars since 28.11.2021.

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 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.

8. 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 may not be guilty of the alleged offence. She is not likely to commit any offence while on bail.

9. Petitioner is stated to be 45-year old family person having husband and children. Being a married person with family responsibilities 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 merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep petitioner in further preventive custody in instant case.

11. Accordingly, petitioner is ordered to be released on bail on her furnishing bail bonds and surety bonds to the satisfaction of Ld. 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.

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12. In case, petitioner is found to be involved or get 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 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

August 28, 2023
Ajay

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