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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 20.07.2023

Jasvir Kaur

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. J.K. Singla, Advocate for the petitioner.

Mr. Virat Rana, AAG Punjab.

ARUN MONGA, J. (Oral)

Petitioner, stated to be a senior citizen lady, seeks bail in a case bearing FIR No.76 dated 10.10.2022 (Annexure P-1), registered under Section 22(C) of the NDPS Act, 1985 at Police Station SadarBudhlada, District Mansa.

2. Per FIR, on 10.10.2022, on routine duty, a police party spotted petitioner and her co-accused Kewal Singh sitting on road side and were searching something in a plastic bag. Another lady named Sarabjit Kaur wife of Balkaur Singh was also checking her purse then. On suspicion, they were apprehended. The investigating Officer after following the procedure prescribed under Section 50 of the NDPS Act, searched the aforesaid persons. Prescription drugs viz. 3000 tablets of Tramwel SR 100 (salt Tramadol) and 1400 tablets of Alprasafe 0.5 (salt Alprazolam) were recovered a plastic bag which was in possession of accused Kewal Singh and Jasvir Kaur (petitioner herein) and recovery of 400 tablets of Alprasafe 0.5 was effected from the purse carried by co-accused Sarabjit Kaur. They were carrying the contraband without any permit/licence. They were arrested from the spot.

3. Learned counsel for petitioner contends that petitioner has been falsely implicated in the present case. He submits that alleged recovery effected from the plastic bag has been planted on the petitioner. He further submits that

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petitioner is in custody since 10.10.2022 and challan has already been presented before the competent Court but none of the witness has been examined till date. He further argues that there is no compliance of Sections 42, 50 and 57 of the NDPS Act in the present case.

4. On the other hand, learned State counsel, on instructions from ASI Jaskaran Singh, opposes the bail petition. He submits that petitioner has committed serious offence. The quantity of contraband recovered falls under commercial quantity as per provision of the NDPS Act. He further submits that in case, petitioner is granted concession of bail, there are chances of her fleeing from justice. He further points out that petitioner is involved in another case under NDPS Act. However, he admits that she is on bail in that case.

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

6. Challan was presented and the case is fixed for prosecution evidence but no witness has been examined so far. Investigation is thus complete *qua* petitioner. She is thus not required for custodial interrogation. Allegations against petitioner are a matter of trial at this stage. 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 the last more than 9 months in preventive custody, she being behind bars from 10.10.2022. She 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 Court below 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.

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7. Petitioner is stated to be 62-year oldlady suffering from various age related ailments including kidney infection. Her husband is handicapped from both legs and her only married son is residing separately.She is the sole breadwinner of the family. She has fixed abode and it is unlikely that she is at flight risk or will flee from the trial proceedings. Offence allegedly committed by petitioner is of non-violent nature and in that sense her release on bail is not a threat to the society at large by committing any violent crime.
8. 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.
9. 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 Magistrate, as the case may be.
10. 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.
11. It is made clear that any observations and/or submissions noted herein above 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.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 20, 2023
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No