

CRM-M-43869-2021 (O&M)

223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43869-2021 (O&M)

Date of decision: October 17, 2023

Nihal @ Nihali

....Petitioner

versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Vimal Kumar Gupta, Advocate for petitioner.

Ms. Svaneel Jaswal, Additional AG Haryana.

ARUN MONGA, J. (ORAL)

Following the denial of bail by the learned trial Court, the petitioner is now before this Court seeking her release as an undertrial in a case bearing FIR No.553 dated 18.08.2020, registered under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the Shivaji Colony Police Station in Rohtak.

2. Per the First Information Report (FIR), on August 17, 2020, ASI Satish Kumar received secret information that some persons were involved in the business of selling smack and were present near Outer Bypass Jail Chowk, Rohtak, in a vehicle bearing No.UP-26X-8454. If a raid were conducted, they could be caught red-handed. Information under Section 42 of the NDPS Act was sent to the police station. A police party reached the given place where a white Creta vehicle with the license plate No.UP26X8454 was parked, with three persons and a lady inside, and a white Swift car with the license plate No. PB-13BJ-1906 was also there. The persons sitting in the Creta vehicle were apprehended, and they disclosed their identities.

2.1. After following the due procedure, a search of the persons sitting in the Creta vehicle was conducted. From the search of Sanjeev Kumar (the driver), son of Ramdas, one pack of Rs.50,000/- (Rs.500 x 10) held in his right hand, and from the right pocket of his pants, 100 grams of a light brown-colored substance (smack) contained in a

CRM-M-43869-2021 (O&M)

plastic bag was recovered. Upon searching the person sitting in the driver's seat, namely Kishan Gupta, son of Ram Avtar Gupta, 100 grams of light brown-colored substance (smack) and one pack of Rs.50,000/- (Rs.500 x 10) were recovered from his right pocket. Furthermore, during the search of one person sitting on the rear seat of the car, namely Sanjay, son of Gurmit Singh, 600 grams of light brown-colored substance (smack) in a plastic bag held in his right hand, and during the search of Nihali @ Nihal Kaur (the petitioner), 600 grams of light brown-colored substance (smack) in a plastic bag were found between her legs, covered with a chunni. When asked about another car, accused Sanjay stated that he and his mother had come to get smack in the said car. An FIR was registered, and the accused were apprehended. The petitioner has been in custody since then.

3. First and foremost, the learned counsel for the petitioner argues that the co-accused, Amit and Kishan Gupta, had already been granted bail by a co-ordinate Bench of the Court via orders dated 27.01.2021 in CRM-M-35970-2020 and dated 05.03.2021 in CRM-M-5325-2021. The counsel also argues that another co-accused, Sanjeev Kumar, has also been granted bail by the learned Court below via an order dated 12.03.2021.

3.1. The learned counsel also contends that the total alleged contraband recovered from the petitioner was 600 grams. As per the report dated 18.09.2020 (Annexure P-4) from the Senior Scientific Officer of the Regional Forensic Science Laboratory, Sunaria (Rohtak), 0.5% was deducted out of the total 3.3 grams of the sample, which shows that 30% came out of the total 600 grams. The w/w ratio infers the percentage weight of the substance by the total weight. Thus, the total alleged recovery of contraband, i.e., 600 grams, becomes 30 grams of the drug, which is less than the commercial quantity.

3.2. Furthermore, the learned counsel contends that, in reality, the petitioner is being implicated in this case by one police official, namely, Goverdhan, who, in the past, also indulged the petitioner in many FIRs, and the petitioner is currently on bail in those cases.

CRM-M-43869-2021 (O&M)

3.3. Additionally, the counsel emphasizes that nothing incriminating was found within the petitioner's immediate possession, suggesting that the petitioner has been wrongfully arrested in this case.

3.4. The learned counsel appearing for the petitioner relies on the Apex Court's judgment in the case titled **Hasanujjaman and others Vs. The State of West Bengal**¹ to contend that, irrespective of the merits, merely on the ground of the duration of custody, the petitioner is entitled to bail. She further relies on the Apex Court's judgment in the case titled **Sanjay Chandra versus CBI**² to contend that imprisonment before conviction has a substantial punitive content.

3.5. Finally, the counsel asserts that there is no need for further custodial interrogation as there is nothing to be recovered from the petitioner, and there is no risk of the petitioner tampering with evidence or influencing prosecution witnesses.

4. On the other hand, learned State counsel opposes the bail petition, arguing that the petitioner has committed a serious offense. If the petitioner is granted bail, there are chances of her fleeing from trial proceedings. She submits that the recovery of contraband falls within the ambit of a commercial quantity, and the rigors of Section 37 of the NDPS Act would be attracted in this case. On a Court query, learned State counsel does not controvert that co-accused have already been granted bail.

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

6. In response to a query from the Court, under instructions from SI Harender, learned State counsel submits that challan has already been filed and charges were framed on 17.04.2023. Investigation is thus complete regarding the petitioner, and she is not required for custodial interrogation.

7. At this stage, the allegations against the petitioner are subject to trial. The trial's progress has been slow, and it is anticipated to take a considerable amount of time. Of sixteen witnesses, none has already been examined so far. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In

¹ SLP (CrI.) No.3221-2023 decided on 04.05.2023

CRM-M-43869-2021 (O&M)

contrast, the petitioner has been in detention since August 17, 2020, for more than 03 year and 02 months.

8. The investigation regarding the petitioner is over, but she is being kept in preventive custody merely on an unfounded suspicion that if she is let out, she may either tamper with evidence or influence witnesses. There is no documentary evidence, and it is more in the nature of an FSL report concerning the contraband, which has already been filed in the Court below and is inaccessible to the accused. As for the witnesses, they are all official, and therefore, they are unlikely to be influenced, even if there are any such apprehensions by the prosecution.

9. Be that as it may, the offense allegedly committed by the petitioner is non-violent in nature, and in that sense, her release on bail does not pose a threat to society at large in terms of committing any violent crime. 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.

10. Co-accused of the petitioner have already been granted bail by this Court, as aforesaid.

11. The petitioner is stated to be a 57-year-old. Having fixed abode, it is unlikely that she is a flight risk or will flee from the trial proceedings.

12. 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 by keeping the petitioner in further preventive custody.

13. Accordingly, the petitioner is ordered to be released on bail, if not required in any other case, upon furnishing bail bonds and surety bonds to the satisfaction of the Ld. trial Court, where her case is being tried, and in case he/she is not available, before the learned Duty Judge, as the case may be.

14. In case the petitioner is found involved or gets involved in any offense while on bail, the prosecution shall be at liberty to seek the cancellation of her bail in the instant case.

16. Pending applications, if any, shall also stand disposed of.

Yes/No