

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-45039-2021 (O&M)

Date of decision:24.07.2023

Ranno Devi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Kanisth Ganeriwala, Advocate
for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioner seeks bail in case bearing FIR No.282 dated 09.06.2021, registered under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') at Police Station, City Barnala, District Barnala.

2. Per FIR, based on a secret information on 09.06.2021, petitioner was apprehended by the police and 1,103 tablets and 3 grams white intoxicant powder containing salt tramadol and 1 nip of intoxicant liquid containing salt Codeine Phosphate were recovered from her possession without any permit or licence. Per report of RTFSL, Bathinda, average weight of each tablet was 404.54 mg/tablet. Petitioner was taken into custody and investigation was carried out.

3. Learned counsel for petitioner submits that petitioner has been falsely implicated in this case. The mandatory provisions as prescribed under Sections 42 and 50 of NDPS Act have not been complied with. Neither any independent witness was joined before search nor search was made before a Gazetted officer. Rigors of Section 37 of NDPS Act can not be applied to the petitioner since recovery was planted on her and it is highly likely that in the light of statutory violations as aforesaid, by not involving the

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Gazetted officer, the same will result in acquittal of the petitioner. 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 even antecedents of the petitioner are clean and she is not involved in any other FIR.

4. On the other hand, learned State counsel, opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of her fleeing from justice. On a Court query, under instructions from ASI Magar Singh, he submits that challan was presented on 29.11.2021, charges were framed on 09.03.2022. There are 12 prosecution witnesses out of them, two have been examined and five witnesses have given up and next date before the trial Court is 25.08.2023. He, however, submits that recovery of contraband falls within the ambit of commercial quantity and 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. Challan has been presented in the present case and even charges have also been framed. Petitioner is not required for custodial interrogation. 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 two years and one month in preventive custody, she being behind bars from 09.06.2021. 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, particularly when she has clean antecedents. 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.

7. Petitioner is stated to be 53-year old, widow and having three daughters and one son to look after. Her daughters are of marriageable age and she being in custody is

unable to make arrangements. Due to her continuous incarceration, perceived as a social blot on the family, marital prospects of daughters will be severelyjeopardize. Being a family person with clean antecedents and no other case pending against her, it is unlikely that she is 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 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.

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 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.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

24.07.2023
vandana

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