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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: September 14, 2023

Rani Kaur
....Petitioner
versus
State of Punjab
....Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- Mr. J.K. Singla, Advocate for petitioner.
Mr. Shubham Kaushik, AAG Punjab.

ARUN MONGA, J. (ORAL)

After being declined bail by the trial Court, petitioner before this Court seeks her release as an undertrial in a case bearing FIR No.199 dated 04.11.2022, registered under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’), at Police Station, Bhikhi, District Mansa.

2. Per prosecution version, petitioner along with her co-accused, namely Gurmail Kaur alias Melo were apprehended on 04.11.2022 by the police, in the area of P.S. Bhikhi while possessing 1200 Alprazolam tablets IP 0.5 (Alpranof 0.5), Batch No.V2246403; 200 Alprazolam tablets IP 0.5 MG (Alprasafe 0.5), Batch No.PCCAA1030 and 200 Tramadol Prolonged release tablets IP Tramwal SR 100. As per Chemical Report, Alprazolam tablets IP 0.5 (Alpranof 0.5), Batch No. V2246403 contained Alprazolam salt and average weight of these tablets is 115.12 mg. Total weight of these tablets containing Alprazolam comes to 138.144 grams (commercial category). As per Chemical Report, Alprazolam tablets IP 0.5 MG (Alprasafe 0.5), Batch No. PCCAA1030 contained Alprazolam salt and average weight of these tablets is 127.51 mg. Total weight of these tablets containing Alprazolam comes to 25.502 grams (non-commercial category). As per Chemical Report, Tramadol Prolonged release tablets IP Tramwal SR 100 contained Tramadol Hydrochloride salt and average weight of these tablets is 385.13 mg. Total weight of these tablets containing Tramadol Hydrochloride comes to 77.026 grams (non-commercial category). Petitioner is in custody since then.

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3. Learned counsel for the petitioner contends that alleged contraband was recovered from polythene lying on the floor nearby the petitioner and her co-accused. Alleged recovery is a planted one. He further contends that alleged recovery was not effected from the possession of petitioner and she has thus been falsely implicated in this case. She has not committed any alleged offence. He also contends that prosecution agency had not complied with mandatory provisions of Sections 42, 50 and 57 of NDPS Act.

3.1. Learned counsel further contends that nothing is to be recovered from the petitioner and she is not required for further custodial interrogation. False implication of petitioner cannot be ruled out. There is no likelihood of petitioner tampering with evidence and/or influencing prosecution witnesses. Learned counsel further submits that matter is pending for prosecution evidence but none of the witnesses has been examined till date.

4. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. He further canvasses that commercial quantity of contraband was recovered and rigors of Section 37 of NDPS Act are applicable in this case. If released on bail, there is every likelihood of petitioner fleeing from trial proceedings and/ or tampering with evidence and influencing witnesses.

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

6. On a Court, learned State counsel, on instructions from ASI Nachhatar Singh submits that challan has already been filed and charges were framed on 16.02.2023. Out of total 10 witnesses, none has already been examined so far. Investigation *qua* petitioner is thus complete and petitioner is not required for custodial interrogation. He also submits that there are two more cases against the petitioner under the NDPS Act, but she is on bail in those cases.

7. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Trial is likely to take long time as it is proceeding at a snail pace. Whereas, petitioner has already been in jail for the past more than 10 months, being behind bars since 04.11.2022.

8. 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

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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.

9. 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.

10. Petitioner is stated to be a 50-year old person. Having fixed abode, it is unlikely that she poses any flight risk and/or will flee from the trial proceedings.

11. 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.

12. 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 Judge, as the case may be.

13. 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.

14. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for limited purpose of bail hearing alone and learned trial Court shall proceed without being influenced with this order.

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

(ARUN MONGA)
JUDGE

September 14, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No