

CRM-M-47146-2022 (O&M) -1-

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(119+221)

CRM-M-47146-2022 (O&M)
Date of decision:- 17.11.2023

Tarsem Kaur @ Semo ... Petitioner
Versus
State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. D.N. Ganeriwala, Advocate,
Mr. Kanisth Ganeriwala, Advocate and
Mr. Vikramjeet Singh, Advocate
for the applicant-petitioner.

Mr. A.P.S.Tung, DAG, Punjab.
for State-respondent.

SUVIR SEHGAL, J. (ORAL)

CRM-47199-2023

1. Application is allowed as prayed for.
2. Challan filed in FIR No.177 dated 05.07.2006 is taken on record as Annexure P-16.

Main case

1. Instant petition has been filed under Section 439, Cr.P.C. seeking grant of post-arrest bail in:-

FIR No.	Dated	Police Station	Sections
0074	01.08.2022	Sadar Banga, District SBS Nagar	21 and 22 of the NDPS Act

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2. Version of the prosecution is that FIR, Annexure P-1, has been registered when during routine patrolling, a police party saw a lady throwing a polythene bag in the shrubs by the road side. After associating a lady constable, she was apprehended and she disclosed her name as Tarsem Kaur @ Semo, present petitioner. The polythene bag was found with 45 intoxicant tablets, which on analysis was found to contain salt “Etizolam” with a total weight 2.565 grams. Recovery of 2 grams heroin was also effected from the polythene bag.

3. Counsel for the petitioner submits that the petitioner is more than 60 years of age and has been falsely implicated as her daughter-in-law had filed numerous complaint against the Sarpach of the village and SHO Incharge, Police Station Sadar Banga, District SBS Nagar alleging sexual harassment. In particular, he has made a reference to a petition under Section 156 (3), Cr.P.C., wherein by order dated 02.07.2021, Annexure P-4, learned Chief Judicial Magistrate, SBS Nagar called for a report from the SHO. He submits that as a counterblast, petitioner has been implicated in some criminal cases and FIR bearing No.75 dated 01.08.2022, Annexure P-6, has been lodged against her daughter-in-law under Section 22 of the NDPS Act. He asserts that the recovery of salt, Etizolam, is marginally above the commercial quantity and heroin, in any case, falls within the ambit of small quantity as per the notification issued under the NDPS Act. He submits that despite the fact that the petitioner is in custody since 02.08.2022, trial is at an initial stage. By referring to the Custody Certificate, he submits that out of the four cases in which the petitioner has been falsely involved, she has been acquitted in two of them by judgments,

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Annexures P-11 and P-12 and in the third case, although she is named as an accused, but she has not been challaned.

4. *Per contra*, State counsel, upon instructions from HC, Jagjit Singh, has opposed the petition and submits that as the recovery from her is commercial, bar under Section 37 of the NDPS Act will apply. He has also highlighted the antecedents of the petitioner and submits that in case, she is enlarged on bail, she is likely to indulge in the trade of intoxicants. As per his instructions, charge was framed in November, 2022, two out of nine prosecution witnesses have been examined and three have been given up.

5. I have heard counsel for the parties and considered their respective submissions.

6. Petitioner is a sexagenarian lady and is in detention for the last more than fifteen months. Veracity of allegations levelled against her would be subject matter of debate before the Trial Court. Trial is barely half way through and there is a remote possibility of its early conclusion. Although petitioner cannot claim to possess clean antecedents, but from the record before this Court it is evident that she has never been convicted for any offence. Noticing the judgments rendered by the various Co-ordinate Benches, this Court in **CRM-M-18774-2021** titled as “**Jatin Arora @ Jatin Versus State of Punjab**”, decided on 07.07.2021 has held that where the recovery allegedly effected from an accused is marginally above the threshold limit of commercial quantity, benefit of bail should be extended. For the afore-going reasons, this Court is of the view that the petitioner deserves to be enlarged on bail.

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7. Without adverting to the merits or demerits of the arguments addressed by counsel for the parties, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.
8. While being released on bail, petitioner shall furnish an undertaking by way of an affidavit that henceforth she will not get involved in any unlawful activity. In case, she violates the condition, liberty is granted to the State to seek cancellation of bail.
9. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

17.11.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No