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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48257-2023 (O&M)

Date of decision: October 11, 2023

Krishna

....Petitioner

versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Mandeep Kumar Dhot, Advocate for petitioner.

Mr. Mohit Thakur, AAG Punjab.

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 a undertrial in a case bearing FIR No.98 dated 01.07.2023, registered under Section 22-C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), at the City Malout, Police Station in District Sri Muktsar Sahib.

2. According to the prosecution's account, on July 01, 2023, in the area of Police Station City Malout, the petitioner was apprehended. Upon searching the black polythene bag of the petitioner, four strips containing 15/15 intoxicant tablets of Etizola-0.5 Etizolam tablets IP with batch No. KEC, 2207A, manufactured on 11/2022, and expiring on 10/2025, a total of 60 intoxicant tablets were recovered. The petitioner had no permit or license. The petitioner has been in custody since then.

3. The petitioner's counsel argues that the petitioner was neither present at the spot nor was any alleged recovery made from her; it is claimed to have been planted on her. This action is believed to exert pressure on the petitioner to produce her son, who is said to be absconding due to his involvement in an NDPS matter. The petitioner's arrest was allegedly made by planting the alleged recovery on her.

3.1. Additionally, the counsel emphasizes that nothing incriminating was found in the petitioner's possession, suggesting that she has been wrongfully accused in this case. The petitioner is not involved in any other case.

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3.2. Finally, the counsel contends that there is no need for any further recovery from the petitioner, and there is no requirement for additional custodial interrogation. 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. He 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. He though admits that petitioner is not involved in any other case.

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 ASI Jagir Singh, learned State counsel submits that challan has already been filed. 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. Bail serves the purpose of allowing an accused to remain free until their guilt or innocence is determined. In contrast, the petitioner has been in detention since July 01, 2023, for more than 03 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

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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. The petitioner is stated to be a 43-year-old lady carrying out the business of florist. Having a fixed abode, it is unlikely that she is a flight risk 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 by keeping the petitioner in further preventive custody.

12. 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.

13. 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.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on the merits of the case, as they are for the limited purpose of the bail hearing alone, and the learned trial Court shall proceed without being influenced by this order.

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

(ARUN MONGA)
JUDGE

October 11, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No