

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8099-2024 (O&M)

Reserved on: 04.04.2024

Pronounced on: 24.04.2024

Anjali

... Petitioner(s)

Versus

State of Haryana

...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Gurinder Singh Dhot, Advocate
for the petitioner(s).

Mr. Rajat Gautam, Addl.A.G., Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
327	1.9.2022	Parao, District Ambala	21, 27A & 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act")

1. The petitioner, who is in custody for having been found in possession of heroin weighing 300 grams, which falls in commercial quantity, in case FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail.
2. In paragraph 17 of the petition, the petitioner declares that she has no criminal antecedents.
3. Petitioner seeks bail primarily on the ground that there is no evidence of petitioner's possessing the aforesaid contraband.
4. To this, State's counsel submitted that after receiving secret information, the police party complied with Section 42 NDPS Act and copy thereof was sent to the superior officers. He further submitted that on stopping the vehicle, in which the accused were tipped to be transporting the alleged contraband, they found

that the petitioner and other co-accused were inside the said vehicle and the petitioner was having a newborn baby with her. Subsequently, notice under Section 50 NDPS Act was duly served upon the accused. On search of ladies' purse, which the petitioner was carrying in her right hand, the police recovered heroin weighing 300 grams. Thus, the petitioner, who is the main accused, does not deserve the concession of bail. While opposing the bail, the State's counsel contends that the quantity involved is commercial and grant of bail encourages the drug peddlers. The State has filed a status report through the concerned DySP, which is taken on record. A perusal of the status report reveals that the petitioner was found in possession of 300 grams of heroin, which falls in commercial quantity.

5. Prosecution's case is being extracted from the reply dated 2.4.2024 filed by the State by way of concerned DySP, which reads as under:-

"4. That as a matter of fact, the present case was registered against the accused-petitioner and other co-accused for having conscious possession of narcotic substance. The contents of FIR are as under:-

"Today, Me ASI along with ESI Jaswinder Singh No. 179, HC Rajesh Kumar No. 18, C-1 Sandeep Kumar No. 1044, C-1 Vikramjit Singh no. 1091, EHC Shankar No. 1601 and Lady Constable Ekta no.1602 on government vehicle no. HR37-D- 0012 regarding patrolling and investigation with driver EHC Dharmbir Singh No.1292, at around 3.00 AM, started from C.I.A. staff Ambala Cantt. via Swastik Chowk Ambala Cantt and reached National Highway Shastri Colony Highway cut going from Ambala Cantt towards Shahabad at around 3.15 AM. At the same time informer gave secret information that, Anjali wife Akbar alias Lucky, Anwar alias Abhi son of Shaka, Rekha wife Shyamlal alias Shyama residence of Deha Colony, Ambala City who do the business of supplying Heroin/Chitta narcotics. And all these yesterday with a rental car Number PB-11-CM-8500 white Swift Desire has gone to take heroin/Chitta/drugs and are roaming around giving supply who will go to Deha Colony Ambala City from Shahabad side. If the barricading setup at Shastri Highway cut from Shahabad towards Ambala Cantt, all the above can be apprehended along with heroin/Chitta intoxicants in large quantity. The information which is from a confirmed and trustworthy person, I have sent a separate written information in this regard to the officer in charge of the Police Station, Parao through EHC Shankar No.1601 and issued a notice under section 42 NDPS prepared separately. The witnesses put their signatures on the notice, the notice U/S 42 NDPS ACT was also sent to Mr. Ram Kumar Deputy Superintendent of Police, Ambala Cantt by handing it over to C-1 Vikramjit Singh No.1091 at his residence New Officer Colony Ambala city, ASI Manoj Kumar requested the passersby's to be witness after giving them information regarding secret information

but nobody was. be ready for the same and went away after expressing their due helplessness. ASI Manoj Kumar started checking the vehicles coming from Shahbad by blocking the Shastri Colony Highway cut from Shahbad towards Ambala Cantt, but after some time, according to the information given by the informer, a car no. PB11CM8500 white color Swift Dzire was seen coming towards the police party from Shahabad side, which ASI Manoj Kumar with the help of fellow colleagues signaled to stop by placing pre-installed barricades, made them stop on the side and asked the names of the people sitting in the car. So, the boy sitting on the driver's seat disclosed his name as Rajbir Singh alias Raju S/o Samay Singh, resident of Quarter no. 1, Shambhu Railway Station, Distt. Patiala, Punjab. The boy sitting on the seat near the driver disclosed his name as Anwar alias Abhi son of Shaka resident of Deha Colony Ambala city and the woman sitting behind the driver seat disclosed her name as Rekha wife of Shyamlal resident of Deha Colony Ambala City and the other woman sitting with her disclosed name as Anjali (accused- petitioner) wife of Akbar alias Lucky r/o Deha Colony Ambala City District Ambala, who had a newborn baby in her lap. On questioning, she revealed the name of the baby as Ayush s/o Akbar alias Lucky r/o Deha Colony Ambala City. Car driver Rajbir alias Raju was given separate Notice u/s 50 NDPS Act regarding search of his person and his car number PB-11-CM-8500. Anjali, Rekha and Anwar alias Abhi were also given the separate notice U/s 50 NDPS Act and the notices were read out and explained to them, that I suspected that all of you are in possession of some narcotic substance and you are to be searched.. You have the legal right to get yourself searched before a Magistrate or Gazetted Officer if you wish. On which the car driver Rajbir Singh alias Raju Anwar alias Abhi, Rekha and Ajali, after receiving the notice, expressed their verbal desire to get their search done in front of the Gazetted Officer. After this, according to the list of Gazetted Officers, ASI Manoj Kumar, at around 5:00 AM, from his mobile number 7611992000, called Mr. Sonu Saini, SDO Panjokhara W/S SUB DIVISION AMBALA, District Ambala by calling on Mob.No.9466457027, he accepted the request of ASI Manoj Kumar and agreed to reach on the spot as per the situation. At around 5:20 AM, Mr. Sonu Saini SDO Panjokhara W/S SUB DIVISION AMBALA District Ambala reached on the spot in his private car. To whom ASI Manoj Kumar explained the situation so far and presented the notice u/s 50 of NDPS Act, Rajbir alias Raju, Anjali, Rekha, Anwar alias Abhi and car number PB-11-CM-8500, who saw the notices U/ S 50 of NDPS Act after reading them who revealed his identity to Rajbir alias Raju Ajli Rekha and Anwar alias Abhi and Mr. Sonu Saini SDO Panjokhara W/S Sub Division Ambala, District Ambala and searched be and gave instructions for searching my colleagues, as per the instructions I searched the fellow colleagues and did not find any intoxicants apart from daily use items. The search memo of colleagues was prepared separately. On which the witnesses put their signatures and Mr. Sonu Saini SDO Panjokhara W/S SUB DIVISION AMBALA District Ambala, instructed the lady constable Ekta No.1602 to search the accused Rekha and Anjali

with full decency, which on searching the black colored ladies purse by lady constable Ekta No.1602 which was in the right hand of Anjali, found a light yellow colored substance wrapped in plastic polythene was recovered, which on checking was found to be Heroin/Chitta intoxicant as per my experience and as told by Anjali. On weighing the recovered heroin chitta with the electronic weighing machine kept in the government vehicle, the weight of the heroin/chitta along with plastic polythene was 300 grams. Parcel of the recovered heroin was prepared separately by putting it in the same plastic polythene and black colored purse in a plastic white box. On searching Rekha, a light yellow colored substance, wrapped in white colored plastic polythene was recovered from the black purse held in her hand on checking, it found to be intoxicating substance Heroin/Chitta as per my experience and as per information given by Rekha. Heroin/Chitta drug substance was recovered. After weighing with electronic weighing machine, the weight of Heroin/Chitta along with plastic polythene was 300 grams. The recovered heroin was put in a white plastic box along with the same plastic polythene and black colored purse and a separate brief was prepared. After that Mr. Sonu Saini SDO Panjokhara W/S SUB DIVISION AMBALA District Ambala instructed me to search the car driver Rajveer alias Raju, Anwar alias Abhi and car no. PB-11-CM-8500 in front of him, according to which I searched Anwar alias Abhi, a light yellow colored substance wrapped in a white colored plastic polythene was recovered from the right pocket of his black colored lower, which after checking, according to my experience and as per the information given by Anwar alias Abhi, heroin/chitta intoxicant was found recovered. On weighing the heroin/chitta intoxicant with electronic weighing machine, the weight of heroin/chitta intoxicant along with plastic polythene was found to be 400 grams. The recovered heroin was found in the same plastic polythene. A separate parcel was prepared by putting it in the white plastic box. After that, when the driver Rajbir alias Raju and his car no. PB11 CM-8500 were searched, no intoxicating substance was recovered apart from the daily use items. The car driver Rajbir alias Raju told on questioning that I provide my car to all of them to bring the drug Heroin Chitta, and in return I charge more than the fair price. The three parcels of heroin intoxicant which were recovered, I put my MK 3/3 seals bearing impression MK on all the three parcels, and handed over the seal to ESI Jaswinder Singh No.179 Ambala, on the above parcels Mr. Sonu Saini SDO Panjokhara W/S SUB DIVISION AMBALA District Ambala duly stamped the parcels with his own seal SK 1/1 and attested the parcels and sample seal. Mr. Sonu Saini SDO, Panjokhara W/S SUB DIVISION AMBALA, District Ambala kept the seal with him after use. ASI Manoj Kumar seized all three parcels weighing 400 grams, 300/300 grams with sample seal, car no. PB-11- CM-8500 Swift Dezire color white were seized and taken in police possession by recovery memo as evidence, on the recovery memo accused Anjali, Rekha, Anwar alias Abhi and Rajbir alias Raju put their thumb impressions and witnesses put their signatures and Mr. Sonu Saini SDO Panjokhara W/S SUB DIVISION AMBALA,

District Ambala ATTESTED the memo. Accused Anjali, Rekha and Anwar alias Abhi kept the intoxicating substance in their possession and the driver Rajbir alias Raju provided his car no. PB-11-CM-8500 and the offense under section 21/27A-61-85 NDPS ACT has been committed. "Hence, the present case has been registered.

5. That after registration of case, the further investigation was carried out by SI Dalbir Singh, No. 67, PS Parao and the IO recorded the statements of witnesses, all the accused were arrested in this case and thereafter, necessary compliance of Section 52, 55, 57, 52-A NDPS Act was completed by the IO and all the accused have been interrogated and on the basis of interrogation, co-accused Salochna wife of Bittu, Shashi wife of Shaka and Advin Tanko Mohammed Ebube Nwankwo S/o Mohammed Nwankwo were arrested in this case and Section 27-A, 29 NDPS Act and Section 180 IPC were added in this case. The accused-petitioner Anjali and other co-accused Rekha etc. were sent to judicial custody. The samples were sent to FSL Madhuban on 09.09.2022 for examination, however, the report c FSL has been received in which the Report of Analysis is as under:-

"Heroin (Diacetylmorphine), O6Monoacetylmorphine, Acetylcodeine, Paracetamol & Caffeine were detected in sample 1.

Heroin (Diacetylmorphine), O6Monoacetylmorphine, Acetylcodeine, Paracetamol & Caffeine were detected in the sample 2.

Heroin (Diacetylmorphine), O6Monoacetylmorphine, Acetylcodeine, Paracetamol & Caffeine were detected in the sample 3." The FSL Report was submitted before the Court of Ld. Special Judge, Ambala on 13.05.2023. The copy of FSL Report is annexed as **Annexure R- 1**.

6. That on completion of investigation, on 26.01.2023, the final report against the accused-petitioner and co-accused has been prepared and the same was sent to the Court of Ld. Special Judge, Ambala on 27.02.2023, with 24 named witnesses. The charges against the accused-petitioner and co-accused have been framed for the commission of offence punishable under Section 21, 27-A and 29 of NDPS Act on 17.08.2023 and now the trial of the case is fixed for 03.04.2024 for prosecution evidence. However, till date two prosecution witnesses have been examined.

7. That as a matter of fact, the accused-petitioner Anjali was found in possession 300 grams heroin/chitta along with plastic polythene and other co-accused Anwar @ Abhi and Rekha were also found in possession of heroin/chitta of commercial quantity, hence, the present petition is liable to be dismissed.

8. That on checking of antecedents of accused-petitioner it has been found that the accused-petitioner is not involved in any others case."

6. An analysis of the arguments as well as the written submissions made by the State, the petitioner fails to make out a case for regular bail, particularly in view of the fact that the petitioner was found in possession of heroin in her purse, which falls in commercial quantity. The petitioner is also not entitled for bail on pre-trial custody because the total custody of the petitioner comes out to be only 1 year and 7 months and in the judgment in the case of **Dheeraj Kumar**

Shukla vs State Of U.P. [SLP (Crl) 6690-2022], Hon’ble the Apex Court had granted bail to the accused therein who was having custody of 2½ years. The other judicial pronouncements referred to by the petitioner relates to corex syrup etc., in which the most of the content was sugar, and although quantity is commercial but parameters are different. To the contrary, the recovery in the present case is 300 grams of heroin, which is 20% more than the commercial quantity, because the quantity of heroin greater than 250 grams, falls in commercial quantity, where the minimum sentence which the Court can impose is 10 years. Thus, the petitioner is not entitled for bail on merits as well as pre-trial custody.

7. Petitioner’s next contention is that at the time of her arrest, she had a baby and she must be given bail because the baby is inside the jail along with her.

8. If the petitioner seeks bail for taking care of her baby, the right time was when she was arrested. She is already in custody for 1 year and 7 months and at such a belated stage, this Court cannot take such a plea for consideration for the reasons that now, she is taking this ground on a legal guidance than the actual difficulty. Therefore, no ground is made out for grant of bail to the petitioner.

9. However, taking into consideration the fact that the baby does not suffer, this Court requests the trial Court to take up this matter on top most priority.

Petition dismissed. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

April 24, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No