

224

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16046-2024

Decided on:-08.04.2024

Seema

....Petitioner..

vs.

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dhruv Gupta, Advocate,
for the petitioner.

Mr. Siddharth Sandhu, AAG, Punjab.

HARKESH MANUJA J.

1. The petitioner, by way of present petition filed under Section 439 Cr.P.C., seeks grant of regular bail pending trial in case bearing FIR No.206 dated 29.09.2023, under Section 21 of NDPS Act, 1985, registered at Police Station Tibba, District Police Commissionerate Ludhiana, wherein the petitioner alongwith two others was apprehended against the alleged recovery of 305 grams of Heroin, besides an amount of Rs. 72,000/- being drug money.
2. Learned State Counsel vehemently opposes the prayer for grant of regular bail to the petitioner while submitting that the recovery involved in the present case is of commercial quantity, besides the custody period of the petitioner is too less; thus, she does not deserve the concession of regular bail.

3. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made on behalf of the petitioner.

4. A perusal of the FIR shows that three persons, namely, Angrej Singh, Rajwinder Kaur @ Meeta and Seema (petitioner herein), were apprehended by the Investigating Officer carrying three separate polythenes in their hands, which upon being checked, the Heroin weighing 305 grams in total was recovered from all the three persons. Relevant portion taken from the translated copy of FIR is re-produced hereunder:-

“ Then I SI gave the notice under section 50 of the ndps act to Angrej Singh and Rajwinder Kaur Alia Asmita and told them about my identity that I SI Sukhwinder Singh number 2370 Ludhiana, I am main officer at Police Station Tibba, Ludhiana. I'm wearing the uniform according to my rank and my name plate is visible. Then I SI along with the police party who had apprehended these persons asked about the polythene bag lying upon the table and asked as to what is there in the polythene bag then Angrej Singh said that in the polythene bag there is Heroin and upon this I SI told Angrej Singh that I want to check the polythene bag but you have the legal right to get it examined from any senior official or magistrate sahib. They can be called upon the spot but all 3 of them in one dialogue said that they have full faith upon me you only can check the polythene bag on the table and other stuff also can be examined by you. Then SI noted the different assent memo of these persons. Assent memo was signed by them and deposition of the witnesses was noted. Then SI checked the polythene bag in their hands and the polythene bag on the table and when the polythene bag on the table last checked then Heroin was recovered. SI pulled out Heroin from these polythene bags and Heroin was then put up in the bigger polythene bag and then it was measured upon the electronic scale

along with the polythene bag, then the total weight was 305 grams. On counting these polythene bags were 20 in number and 15 were already emptied, so 35 total empty polythene bags were covered and upon the table a bigger polythene bag in which Indian currency of Rs.72,000 was there, was also recovered. The persons answered there that this money was collected after selling the Heroin. Then SI put up the recovered Heroin weighing 305 grams in the same polythene bag and then put up in the investigation bag containing a plastic box, a white coloured cloth was prepared and 35 empty polythene bags, electronic wing scale and 72,000 rupees of drug money were prepared stamped SS and demo stamp was prepared separately.”

4.1 It has been nowhere pointed out in the FIR as to what was the quantity of intoxicating material (Heroin) being carried by the three accused persons individually in the polythenes carried in their hands. In view of the law laid down by this Court vide order dated 11.07.2022, passed in CRM-M-28139-2022, titled “Rohit Versus The State of Haryana”, the recoveries from the polythenes being carried by the accused persons separately cannot be totalled to examine as to whether the total recovery was commercial or non-commercial. Relevant para-8 of the said order dated 11.07.2022 is re- produced hereunder:-

“8. This Court in the judgments passed in the cases of “(i) Dinesh Singh Dadhwal, (ii) Buta Singh @ Buti, (iii) Avtar Singh, (iv) Vicky Kaur, (v) Daniya, (vi) Gagandeep Singh @ Gagna, (vii) Navdeep Kumar and (viii) Harjit Singh @ Jeeta (supra) has categorically held that if separate recoveries are effected from each accused, the said recoveries cannot be totalled to examine as to whether the total recovery is commercial or non-commercial.”

5. In view of the discussion made hereinabove, the benefit of *prima facie* error on the part of investigating agency has to go to the petitioner and the fact that she is already behind the bars since 29.09.2023, i.e. for the past more than six months, besides it, the co-accused of the petitioner, namely Rajwinder Kaur @ Meeta has already been granted the concession of regular bail by this Court vide order dated 12.03.2024 passed in CRM-M-65337-2023, I do not find any justification to extend her incarceration.

6. In view of the above, but without commenting anything on the merits of the case, lest it may prejudice the trial, the present petition is allowed and the petitioner is ordered to be released on regular bail on her furnishing adequate bail/surety bonds to the satisfaction of the Trial Court/Illaq Magistrate / Duty Magistrate concerned.

7. It is made clear that this order may not be construed as an expression of opinion on the merits of the case.

8 Pending miscellaneous application(s), if any, shall also disposed off.

08.04.2024
sonika

(HARKESH MANUJA)
JUDGE

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