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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-50818-2024 (O&M)
Date of decision: 18.10.2024

Shalu Bai Fauja @ Khushalia Bai ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sukhwinder Singh Dhillon, Advocate
for the petitioner.

Mr. Satjot Singh, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 of BNSS, 2023, is for grant of anticipatory bail to the petitioner in FIR No. 266 dated 27.11.2022, registered under Section 21 of the NDPS Act, 1985 at Police Station Sadar Fazilka, District Fazilka.
2. Brief facts of the case relevant for the disposal of the present petition are that on 26.11.2022, a letter was received from the office of Company Commander, BSF, Fazilka, wherein it was informed that 642 grams of heroin was recovered from the abandoned land of one Bashir Singh. In the said letter, Veer Singh, Balwinder Singh, Santokh Singh and petitioner Shalu Bai Fauja were named as suspects, who had allegedly tried to smuggle heroin from Pakistan to India. On the basis of this letter, the

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aforementioned FIR was registered. However, during investigation, the police found all the four persons, named as suspects in the letter sent by BSF to be innocent, though said recommendation of the SHO of the police station concerned was not approved by the higher police authorities. Later on, Santokh Singh was arrested on 31.08.2024, who is the real son of the present petitioner and during interrogation, he suffered disclosure statement to the effect that the recovered contraband belonged to him. Co-accused Veer Singh, who was also arrested, also admitted that the recovered heroin belonged to Santokh Singh. During the course of investigation, an application was moved by Nanak Singh and others claiming innocence of accused Veer Singh, Santokh Singh and the present petitioner. However, since the matter belonged to cross border smuggling, it was opined by the Inquiry Officer that there was no need to carry out any inquiry. Apprehending her arrest, the petitioner had moved an application for grant of anticipatory bail before the Court of learned Judge, Special Court, Fazilka, but the same had been dismissed, vide order dated 27.09.2024.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in this case. No recovery has been effected from the petitioner. In fact, the aforesaid contraband was recovered from a field, which does not belong to petitioner. Neither any independent witness was joined at the time of effecting recovery nor the mandatory provisions of NDPS Act were followed. No recovery is to be effected from the petitioner. She is ready to join the investigation. No useful purpose would be served by detaining her in custody. Therefore, it is urged that the petition deserves to

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be allowed.

4. Reply by way of affidavit of DSP, Sub Division, Fazilka has been filed in Court today, which is taken on record. It is submitted therein and learned State counsel has argued that there are serious allegations against the petitioner of indulging in cross border smuggling of drugs. 642 grams of heroin has been recovered in this case, which falls under commercial quantity. The son of the petitioner has been arrested and he has admitted that the recovered contraband belonged to him. Hence, the complicity of the petitioner can also be not ruled out. More so, she is involved in one more case under the NDPS Act, which shows that her criminal antecedents are not clean. Custodial interrogation of the petitioner is must for proper investigation in the matter as well as for effecting further recovery of contraband, if any. It is, thus, argued that the petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

6. The present FIR was registered on the basis of a letter received from the office of Company Commander, BSF, Fazilka, wherein it was informed that 642 grams of heroin was recovered from an abandoned land and the petitioner along with aforesaid co-accused were named as suspected persons. Although, in initial investigation, the petitioner and co-accused were found innocent but the said recommendation was not accepted by the higher police authorities and thereafter, on further investigation, co-accused Santokh Singh, who is son of the petitioner, was arrested and he admitted

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that the recovered contraband belonged to him. During the course of investigation, complicity of the present petitioner in the commission of subject offence has been *prima facie* established. She is shown to be involved in one more case under the NDPS Act, which means she is not having clean criminal antecedents. The allegations against the petitioner are quite serious as she is stated to be involved in cross-border smuggling of drugs. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 482 of BNSS are to be exercised in extraordinary and sparing circumstances. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 482 of BNSS. Many useful information can be disinterred during custodial interrogation. It has also to be seen that an order of anticipatory bail does not operate as inroad in the normal legal procedure of criminal cases by the trial Court. It is also a matter of discretion to grant or not to grant pre-arrest bail. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather her custodial interrogation is required for thorough investigation in the matter by the police and for effecting recovery of contraband, if any. Accordingly, finding no merit, the petition is dismissed.

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7. It is made clear that the observations made hereinabove are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion on the merits of the case.

18.10.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No