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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21701-2025
DECIDED ON: 25.04.2025

KAJAL DEVI

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhishek Thakur, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. Prayer

The jurisdiction of this Court has been invoked under Section 482 BNSS, 2023 for grant of anticipatory bail to the petitioner in FIR No. 17 dated 04.03.2025 under sections 21, 29, 61, 85 of NDPS Act, registered at Police Station Shahpurkandi, District Pathankot (Annexure P-1), keeping in view the facts and circumstances mentioned in the petition.

2. Prosecution story setup in the present case as per the version in the FIR as under:-

“Jai Hind today, I SI/SHO including Naresh Kumar, 1261/Pathankot, LCT Rama Chaudhary No. 1023/Pathankot LCT Monika No. 1051/Pathankot, PHG Ashwini Kumar No. 848 are riding in government vehicle No. PB-65-BG-5108 whose driver is CT Karan No. 49/Pathankot. In relation to checking bad elements were present at T point Defence Road, Tharial and while

checking the vehicles, a white coloured destiny prime scooter without number plate was seen coming from The Chowk Walla Khoo on which two young girls were riding, who after seeing the police party in front, immediately, turned the scooter back and tried to run away, who were apprehended by myself SI/SHO along with help of co-staff and upon asking their names, the scooter driver said her name was Payal daughter of Ajit Singh resident of Ranipur Dhinga and the girl sitting behind, told her name, Sarja alias Shalu, daughter of Ajit Singh, resident of Ranipur Dhinga, on which the SI/SHO tried to include public witness into the police party before checking the scooter of the girls, but everyone refused to join after citing their own reasons. The scooter was checked in the presence of police party and during the checking a transparent polythene envelope with a small amount of weight was found in the dicky of the scooter which was opened and checked and heroine was found in it. On electronically weighing the recovered heroine along with the polythene, it was found to be 15 g and 77 mg. It was put in a plastic box and a parcel was prepared, and the parcel was sealed by me. SI/SHO by my own stamp AK/1 wide separate memo and taken into Police possession. Form 4, 5, 6 were filled at the spot, sample stamp was prepared separately. After usage, the stamp was given to ASI Naresh Kumar 1261 Pathankot scooter, Make Hero destiny prime, without number plate, white coloured was taken into Police positions vide separate memo because accused Payal and Sarja alias Shalu, daughter of Ajit Singh, resident of Ranipur Dhinga, Police Station, Shahpur Kandi district Pathankot committed offence under section 21, 61, 85 of NDPS act by keeping 15 g and 77 mg of heroine in their possession. Videography/photography at the spot regarding Recovery has been done by me using the E-Sakshya app on my mobile phone. Therefore, after writing the Ruqa, it is being sent to Police Station through PHG Ashwani Kumar 848. After registering the case, the case number should be intimated. After making a special report, the same be sent to Ilaqa

magistrate and senior officials and the report under section 42 of NDPS act regarding Recovery after preparing is being sent to the Halqa monitoring officer through LCT Monika No. 1051/Ptk. I SI/SHO along with co-staff, are investigating at the spot SD/- Amanpreet Kaur SI officer, Police Station Shahpurkandi.”

3. Contention

On behalf of the petitioner

Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as neither her name has been mentioned in the FIR nor any contraband has been recovered from her conscious possession. He further contends that her name has only been roped on the basis of disclosure statement of co-accused (her sisters) from whom the recovery has been effected.

Notice of Motion

On behalf of the State

On the asking of the Court, Mr. Jaspal Singh Guru, AAG, Punjab accepts notice on behalf of the respondent-State, who prays for dismissal of the bail submitting that on disclosure statements of co-accused Payal and Sarja, the contraband of 15.77 grams of heroin was supplied by the petitioner. Further, she is a habitual offender involved in two other cases under NDPS Act therefore prays for dismissal of the instant petition.

4. Analysis

Under Section 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, individuals can be prosecuted if they are found to be buyers of contraband, especially in the context of conspiracy or abetment related to drug offenses. This section specifically addresses the penalties for

those who assist or participate in a criminal conspiracy to commit an offense under the NDPS Act. The evidence presented in relevant documents and the First Information Report (FIR) indicates that the petitioner was involved as a buyer in a conspiracy, which could invoke the provisions of Section 29 of the NDPS Act. This section emphasizes that "*whoever abets, or is a party to a criminal conspiracy to commit an offence*" is subject to punishment under this law. Buyers can be implicated under this section if there is adequate evidence demonstrating their involvement in a conspiracy related to drug trafficking.

An additional aspect that must be considered by this court is the frequent practice where individuals implicated under Section 29 of the NDPS Act assert that they were neither present at the scene nor had any contraband in their conscious possession. Taking advantage of this defense, many such accused persons are granted bail. However, this practice needs to be addressed, as individuals targeted under Section 29 are often the primary masterminds behind the drug trafficking networks, orchestrating operations from a distance while using others, typically those found in direct possession of the drugs, as scapegoats. Consequently, the court is of the firm opinion that in such cases, these individuals should be held equally accountable and should not be afforded any leniency.

In the instant case, the recovery though effected has been from the co accused weighing 15.77 gms heroin who are the sisters of the present petitioner but the fact that as per their disclosure statements, the said contraband was supplied by the petitioner cannot be overlooked by this court.

Furthermore, the petitioner's criminal history, marked by involvement in two other similar cases, raises serious concerns about the likelihood of reoffending. There is a distinct possibility that, if granted bail,

the petitioner will once again partake in this unlawful enterprise. To grant bail at this stage would, in effect, subtly convey a tacit endorsement or unintentional encouragement of such nefarious activities.

5. **Conclusion**

In the light of above, discussions made and the *modus operandi* of the kingpins engaged in illicit activities, whether trafficking in small or intermediate quantities, must be met with unwavering resolve and stringent action. The intent of the legislature and the sanctity of the rule of law must be upheld at all costs, and cannot be allowed to be undermined, regardless of the quantity involved, therefore the instant petition stands dismissed being devoid of merits.

However it is made clear that the observations made herein above shall have no bearing in the mind of the trial court while adjudicating the matter.

(SANDEEP MOUDGIL)
JUDGE

25.04.2025

Poonam Negi

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>