

**REPORTABLE/NON-REPORTABLE
IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 31ST DAY OF DECEMBER 2021
BEFORE
HON'BLE MR. JUSTICE SATYEN VAIDYA
CRIMINAL MISC. PETITION MAIN NO. 1865 OF 2021**

Between:-

**RACHEAL ANDISI MMBONNE @ LINDA
AGED ABOUT 29 YEARS
D/O SH. CHARLES KAVULU,
R/O KENYA THIKAKAN, C/O
HOUSE NO. R/74, R/BLOCK MOHAN
GARDEN, DELHI, HOLDER OF
PASSPORT NO. A2101104, PRESENTLY
IN JUDICIAL CUSTODY IN DISTRICT JAIL
KULLU, H.P.**

....PETITIONER

(BY SH. PUSHPINDER SINGH JASWAL, ADVOCATE)

AND

THE STATE OF HIMACHAL PRADESH.

....RESPONDENT

**(BY SH. SHIV PAL MANHAS, ADDITIONAL ADVOCATE
GENERAL)**

**Reserved on : 24.12.2021
Date of decision: 31.12.2021**

This petition coming on for order this day, the
Court passed the following:

ORDER

Petitioner is an accused in case registered vide
FIR No. 127 of 2021 dated 28.5.2021, registered at Police
Station, Kullu, under Sections 21 and 29 of the Narcotic

Drugs and Psychotropic Substance Act, 1985, Section 14 of the Foreigners Act and Section 420 of the Indian Penal Code.

2. Petitioner was arrested on 29.5.2021 in aforementioned case and is presently in judicial custody.

3. Petitioner has prayed for grant of bail under Section 439 Cr.P.C. on the grounds that she is innocent and has not committed any offence. Her implication in the case is false. The investigation is already complete and Challan stands filed in the Court of learned Special Judge, Kullu. Petitioner has undertaken that she will not make any inducement, threat or promise to any other person acquainted with the facts of the case. She has further undertaken to abide by all the conditions, as may be imposed for grant of bail in her favour.

4. In response, the respondent has submitted status report. The case of the respondent is that on 28.5.2021, the house of one Niknain, son of Ravinder Kumar was searched on the basis of secret information, regarding his involvement in retail sale of heroin from his residential house. On search, 50 gms. of heroin was recovered from the house of Niknain. On interrogation, he disclosed that he had purchased 60 gms. of heroin from petitioner out of which 10 gms. was sold

to Jiwan @ Jawan. The petitioner was arrested on 29.5.2021. It is further alleged against petitioner that she is a foreign national. The Visa on which she had entered India has expired on 25.2.2021. It is also alleged that by using the application of petitioner for extension of Visa, some other person has been unlawfully benefited. On such allegations, Section 14 of Foreigners Act and Section 420 of IPC have also been added.

5. I have heard learned counsel for the petitioner and learned Additional Advocate General for the State and also have gone through the status report.

6. The quantity of contraband i.e. 50 gms. of heroin allegedly recovered from co-accused of petitioner is less than commercial quantity. Petitioner has been implicated under Section 29 of NDPS, Act and hence the rigors of Section 37 of said Act will not be applicable in the facts of the case. As per the case of respondent, the contraband was recovered from the house of co-accused Niknain. It is only on the basis of the version given by said Niknain that the petitioner has been implicated. It is also alleged that there had been phone call between the petitioner and her co-accused Niknain before registration of FIR but no details have been provided

as to the time, duration and number of calls allegedly exchanged between petitioner and co-accused. Even the Customer Application Form (CAF) in respect of SIM allegedly used by petitioner is still stated to be under verification. There is no other independent evidence to connect the petitioner with the alleged offence under NDPS Act.

7. Petitioner is citizen of Kenya and her Visa is stated to have expired on 25.2.2021. This factor cannot be used as an impediment in grant of bail to the petitioner. Admittedly the other co-accused namely Niknain and Jiwan @ Jawan have already been released on bail by the learned Special Judge-II Kullu vide common order dated 28.6.2021.

8. The Challan stands already filed and is stated to be pending adjudication before the learned Special Judge, Kullu. Since the investigation is already complete, no fruitful purpose shall be served by prolonging the incarceration of petitioner.

9. The only concern of Court is to secure the presence of petitioner during the trial before the learned trial Court and the same can be done by imposing appropriate conditions. The petitioner is foreign national, yet she will

have to stay back for the purposes of the trial may be at the risk of legal consequence of her overstay.

10. Nothing has been placed on record to suggest that release of petitioner on bail shall be prejudicial to the trial. It is also not the case of respondent that in case the petitioner is released on bail, there is any likelihood of her influencing the witnesses.

11. In the peculiar facts of the case, the application is allowed and the petitioner is ordered to be released on bail in case FIR No. 127 of 2021 dated 28.5.2021, registered at Police Station, Kullu, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 and Section 14 of the Foreigners Act and Section 420 of the Indian Penal Code, on her furnishing personal bond in the sum of Rs. 1,00,000/- with a solvent surety in the like amount to the satisfaction of learned trial Court. This order is subject to following conditions:-

- i) Petitioner shall not leave India. She shall surrender her passport before learned trial Court, if not already submitted before any other authority and the release of her passport will be subject to outcome of the trial.

- ii) Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with prosecution evidence.
- iii) Petitioner shall provide her mobile number, if any, at Police Station Kullu.
- iv) Petitioner shall not delay the trial of the case and shall regularly attend the hearings, except in circumstances beyond her control.
- v) Upon her re-indulging in criminal activities, it shall be open to the respondent, to move this Court for cancellation of bail.

12. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

(Satyen Vaidya)
Judge

31st December 2021
(kck)