

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No.M-25590 of 2017 (O&M)
Date of Decision: August 04, 2017**

Kulwant Kaur

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. IPS Kohli, Advocate
for the petitioner (s).

Mr. Amandeep Singh Gill, Sr. DAG Punjab.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.66 dated 10.04.2016 registered for the offences punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act), at Police Station Kotwali, Kapurthala, District Kapurthala.

Heard.

As per the case of the prosecution, the petitioner was arrested on 10.04.2017 and 250 grams of intoxicant powder (Alprazolam) was recovered from her possession.

Learned counsel for the petitioner submits that the police has

recorded the FIR for the offence punishable under Section 22 of NDPS Act,

while the offence made out is for the offence punishable under Section 21 NDPS Act as Alprazolam is a manufactured drug. On this ground, he has sought pre-arrest bail to the petitioner.

The petitioner after her arrest in this case was released on interim bail on 30.05.2016 as by that time, report of Forensic Science Laboratory had not been received. Police, after receipt of Forensic Science Laboratory report, presented the challan and the petitioner instead of surrendering in the trial Court, has sought anticipatory bail.

I am of the considered opinion that once the petitioner has been arrested in this case and has been allowed interim bail till the receipt of report of FSL, this petition filed by her under Section 438 Cr.P.C. is not maintainable. She has first to comply with the terms of the interim bail order and then raise the plea about application of Section 21 or 22 NDPS Act in her case. Even otherwise, it is immaterial that the police has registered the FIR under Section 22 or 21 NDPS Act as it is for the trial Court to see at the time of framing of charge as to which offence is prima facie made out against the petitioner. There is no ambiguity about the contents of the contraband, which falls within the commercial quantity and she has to face the trial for the same for all intent and purposes.

Consequently, this petition has no merits.

Dismissed.

August 04, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No