

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

CRM-M No.14793 of 2017 (O&M)

Date of decision: 16th February, 2018

Balwinder Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. IPS Kohli, Advocate for
Mr. Prateek Pandit, Advocate for the petitioner.
Mr. B.S. Sewak, Addl. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J. (ORAL)

Allegations against the petitioner Balwinder Kaur in this second regular bail application filed under Section 439 Cr.P.C. in case FIR No.196 dated 13.12.2015 pertaining to Police Station Kartarpur, District Jalandhar under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act'), are that on 13.12.2015 three riders on a motorcycle were apprehended and from the search of the petitioner by LC Kamlesh Rani from the right pocket of sweater worn by her, intoxicating powder certainly analyzed to be diphenoxylate hydrochloride was recovered, leading to her arrest.

Contentions of the learned counsel for the petitioner are that the petitioner is behind bars since almost two years and that wrong charges under Section 22 of the Act have been framed resulting in mistrial.

Learned State counsel has strongly opposed grant of bail to the petitioner on the grounds of quantity of the contraband recovered being a little higher than the commercial quantity and that the trial is underway.

Appreciating the submissions, it is by no means disputed that the petitioner has already undergone incarceration for a period of almost two years as is conceded to at the bar by learned State counsel, together with the arguments raised by learned counsel for the petitioner that being a lady, her search has been conducted in contravention of the mandate laid down in '**Union of India v. Mohanlal and another**' 2016(1) RCR (Criminal) 858 and that since a manufactured drug is alleged to have been recovered and the quantity so recovered is marginally higher than the prescribed limit falling under commercial category and since charges under Section 22 of the Act have been wrongly framed certainly results in mistrial and in view of the opinion expressed by this Court in CRM-32387-2015 in CRA-S-840-SB-2015 titled as '**Rakesh Kumar v. State of Punjab**', decided on 29.01.2018, coupled with the fact that

culpability, if any, shall be determined at the trial and being a lady, impels this Court to allow the prayer made. In view thereof, this Court is of the opinion that further detention of the petitioner in the present case is unwarranted. Accordingly, she is ordered to be released on regular bail to the satisfaction of Chief Judicial Magistrate/Duty Magistrate, Jalandhar.

The petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

February 16, 2018

rps

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