

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

CRM-M No.17843 of 2018

Date of decision : 19.07.2018

Kaki Kaur

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. L. S. Sekhon, Advocate for the petitioner.

Mr. Amit Mehta, Senior D.A.G., Punjab.

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DAYA CHAUDHARY, J.

Petitioner Kaki Kaur has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.20 dated 05.03.2018 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short – “the NDPS Act”) registered at Police Station Sadar Malout, Distt. Sri Muktsar Sahib.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas she was not involved in the alleged offence. As per the allegations in the FIR, she was apprehended by the police along with 10 kilograms poppy husk and provisions of Section 37 of the NDPS Act do not bar for grant of regular bail. Learned counsel further submits that at the time of the alleged recovery, provisions of Section 50 of the NDPS Act were not complied with. The application filed by the petitioner has been dismissed only on the ground that earlier in two

FIRs under the NDPS Act, she was convicted. Learned counsel also submits that the petitioner was picked up from her house on 04.03.2018 at about 06:30 p.m. in presence of her children and nothing was recovered from her. Petitioner is a poor lady and she is mother of three daughters and two sons and all are minor. She is the only bread earner of the family as her husband is residing separately. She is in custody for the last more than two months and the alleged recovery is non-commercial and for that, no minimum sentence is provided. Provisions of Section 37 are applicable when the recovery is commercial. Learned counsel also submits that no independent witness was joined at the time of alleged recovery.

Learned State counsel has not disputed the custody period. He has opposed the bail of the petitioner on the ground that two more cases of the NDPS Act are there against her.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on the file.

The custody period and the alleged recovery are not disputed. Admittedly, the search was not conducted in presence of a Gazetted Officer or a Magistrate, while the petitioner was having a legal right to be searched in presence of a Gazetted Officer or a Magistrate. The provisions of Section 50 of the NDPS Act are mandatory but the same have not been complied with.

The bail application filed by the petitioner has been dismissed only on the ground that two more cases are there against her, whereas in the

present case recovery is only 10 kilograms of poppy husk, which is non-commercial. All the prosecution witnesses are official witnesses and there is no possibility that petitioner may influence them. The trial may also take some time to conclude. The petitioner is in custody since 04.03.2018. Moreover, she is having minor children and she is the sole bread winner of the family. Therefore, no purpose would be served by keeping the petitioner in custody.

Accordingly, the present petition is allowed and the petitioner is directed to be released on regular bail to the satisfaction of the trial Court.

19.07.2018*sunil yadav***(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No