

Crl. Misc. No. M-18282 of 2018

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-18282 of 2018

DATE OF DECISION:01.06.2018

Manjit Kaur @ Billo

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. JS Jalli, Advocate
for the petitioner.

Mr. Hittan Nehra, Addl. A.G., Punjab.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to petitioner-Manjit Singh @ Billo in case FIR No. 61 dated 17.3.2017 registered under Sections 22/61/85 of NDPS Act at Police Station Samrala, District Ludhiana.

Learned counsel for the petitioner contends that the petitioner has falsely been implicated in the case, whereas, she was not involved. Leaned counsel further contends that neither recovery was effected in the presence of any Gazetted Officer nor Magistrate. No independent witness was joined at the time of alleged recovery. Even no notice was served upon her before making any search. Learned counsel also submits that case of the petitioner is squarely covered by the judgement of Hon'ble the Apex Court

in the case of **Arif Khan @ Agha Khan Vs. State of Uttarakhand** Crl. Appeal No. 273 of 2007 decided on 27.4.2018 wherein the violation of provisions of Section 50 of NDPS Act was there and accused-appellant was acquitted of the charges. The petitioner is in custody since 17.3.2017 and she is behind the bars for the last more than one year and two months. Challan has already been filed and charges have also been framed but even a single witness has not been examined so far. It is also the contention of learned counsel that no other case of NDPS is pending against her and no purpose will be served by keeping her behind the bars.

Learned counsel for respondent-State has strongly opposed the submissions made by learned counsel for the petitioner on the ground that it is matter of evidence whether the mandatory provisions were followed or not. Learned counsel further contends that in case of commercial quantity, there is a bar under Section 37 of the NDPS Act.

Heard the arguments advanced by learned counsel for the parties and have also gone through the contents of the FIR and other documents available on the file.

Admittedly, no independent witness was joined by the investigating officer. Even the recovery was not effected in the presence of Gazetted Officer or Magistrate and as such there is violation of provisions of Section 50 of NDPS Act.

Keeping in view the facts that challan in the case has already been presented, charges have also been framed but not even a single witness has been examined; the petitioner is in custody for the last more than one year and two months; same issue was there before Hon'ble the Apex Court in **Arif Khan's case (supra)**, wherein, appellant was acquitted only on the

ground that there was non-compliance of mandatory provisions of Section 50 of NDPS Act, the present petition is allowed. Petitioner-Manjit Kaur @ Billo is directed to be released on regular bail subject to her furnishing bail/surety bonds to the satisfaction of trial Court.

May 31, 2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No