

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

**CRM-M-34400-2018**

**Date of Decision:16.08.2018**

Raj Kaur

... Petitioner

Vs.

State of Punjab

... Respondent

**CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI**

Present : Mr. B.K. Saini, Advocate  
for the petitioner.

Mr. Nikhil K. Chopra, Addl. A.G. Punjab.

**P.B. BAJANTHRI J. (Oral)**

In the instant petition, petitioner has sought for regular bail under the provision of Section 439 Cr.P.C in case FIR No.129 dated 16.09.2017 registered under Section 22/61/85 of NDPS Act, 1985 (for short “Act 1985”) at Police Station Kot Isah Khan, District Moga.

2. Undisputed facts are that petitioner was arrested on 16.9.2017. Recovery is 200 grams intoxicant powder and quantity of Alprazolam more than 100 grams falls within the ambit of commercial quantity. Judge, Special Court, Moga rejected the regular bail on the score that recovery falls under commercial quantity read with Section 37 of the NDPS Act.

3. Learned counsel for the petitioner submitted that petitioner is a widow and she has three children. She was arrested on 16.9.2017. Thereafter, she was extended the benefit of interim bail on 20.02.2018 and she was again arrested on 25.05.2018. It is further submitted that challan has been filed on 24.5.2018 and so also charges has been framed and trial is listed for evidence for 17.8.2018.

4. Learned counsel for the respondent-State resisted the petitioner's contention while submitting that petitioner is not entitled to regular bail in view of

the recovery which is commercial and as per the provision of Section 37 of the NDPS Act.

5. Heard learned counsel for the parties.

6. There is no bar for granting bail in respect of commercial quantity under the NDPS Act. Section 37 (1) the Act 1985 provides as under:

*“37. Offence to be cognizable and non-bailable- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or section 27A and also for offences involving commercial quantity) shall be released on bail or on his own bonds unless-*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”*

7. Similarly Section 437 of the Cr.P.C provides as under:

*“437. When bail may be taken in case of non-bailable offence. (1) Wheny any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-*

*(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;*

*(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a (acognizable offence punishable with imprisonment for three years or more but not less*

*than seven years)*

*Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.”*

8. Court has to take note of the hardship being caused to the petitioner. On account of the fact that she is a widow woman and has three children. Moreover, she is not involved in any other case. That apart, challan has been presented and charges have already been framed and now the trial is listed for evidence of the prosecution. In the provision of bail referred to above, what is required is only to afford opportunity to the State. Learned State counsel failed to apprise this Court any reason for rejecting the bail application except recovery would fall under commercial category.
9. In view of these facts and circumstances and so also the fact that the trial would take some more time to conclude, petitioner-Raj Kaur is ordered to be released on bail to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.
10. However, the petitioner shall not in any way indulge in any criminal activities and she shall also not influence the witnesses or otherwise interfere with the fair trial.
11. Petition is allowed accordingly.

16.08.2018  
rajeev

**(P.B. Bajanthri)**  
**Judge**

**Whether speaking/reasoned**                      **Yes/No**

**Whether reportable**                              **Yes/No**