

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

CRM-M-39885-2017

Date of decision:-15.5.2018

Rani

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vivek K. Thakur, Advocate
for the petitioner.

Mr.Saurabh Khurana, DAG, Punjab.

H.S. MADAAN, J.

This petition for regular bail has been filed by petitioner – Rani – an accused in FIR No.45 dated 17.5.2016, under Section 22 of NDPS Act, registered at Police Station Subhanpur, District Kapurthala on the allegations that on 17.5.2016 when apprehended by the police party, she was found in possession of 110 gms. intoxicant material. She had filed an application for regular bail, which was declined by Judge, Special Court, Kapurthala vide order dated 25.9.2017, as such, she has approached this Court with same request.

Notice of the petition was given to respondent – State and counsel representing the State has put in appearance.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has raised several arguments on merits contending that several mandatory provisions of NDPS Act have not been complied with citing judgments *Arif Khan @ Agha Khan Versus State of Uttarakhand, Criminal Appeal No.273 of 2007* decided by the Apex Court on 27.4.2018, *Vijaysinh Chandubha Jadeja Versus State of Gujarat, 2011(1) SCC 609* and *CRM-M-10540-2018 titled Manjit Singh Versus State of Punjab*, decided on 25.4.2018, *CRM-M-14773-2018 titled Angrej Singh Versus State of Punjab*, decided on 24.4.2018, *CRM-M-925-2018 titled Pavitar Singh @ Makhan Versus State of Punjab*, decided on 7.2.2018, *CRM-M-1188-2018 titled Jasveer Kaur @ Sheero Versus State of Punjab*, decided on 18.1.2018, *CRM-M-4229-2018 titled Mohammad Sahil Versus State of U.T. Chandigarh*, decided on 9.2.2018 and *CRM-M-2056 of 2018 titled Sukhmander Singh Versus State of Punjab*, decided on 7.2.2018 by Co-ordinate Benches of this Court.

Whereas, learned State counsel has contended that it is a case of recovery of contraband amounting to commercial quantity attracting bar of Section 37 of NDPS Act, therefore, the petition should not be allowed.

After hearing the rival contentions of the learned counsel for the parties, I find that merits of the case though relevant but are not to be seen alone at the time of considering case for grant of bail. Those merits can be taken into view during the trial. For grant of regular bail, the

factors to be considered are quite different, which include like age and previous antecedents of the accused, the conduct of the accused, likelihood of accused appearing in the Court regularly or absconding, the chances of influencing the prosecution witnesses, the stage of the trial etc. Every case has to be viewed on its own facts and circumstances while considering the question of grant of bail and observations made in a particular case cannot be taken to be settled precedent in other cases since as already observed various other factors in light of facts and circumstances of that case are to be considered. As the things stand, it is a case of recovery of contraband of/ commercial quantity and bar of Section 37 of the NDPS Act is there. In none of the judgments by the Co-ordinate Benches referred to by learned counsel for the petitioner, this provision has been referred to.

Section 37 of the Act comes in the way, which reads as under:

Offences 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 3 [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 bond 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.

(iii)(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

The drug trafficking is rising at an alarming rate in this region, especially in the State of Punjab, which has ruined the lives of young men and women. Drug peddlers for a small monetary consideration make the youth to use drugs for a small time excitement/kick. The drug peddlers have successfully destroyed the social fabric of our society and led youth to the wrongful path. Such type of persons need to be dealt with firmly and sternly and no sympathy can be shown to them lest that should prove to be counter productive and result in increased drug trafficking.

Therefore, finding no merits in the petition, the same stands dismissed.

15.5.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No