

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

**Criminal Misc. No. M-44907 of 2017 (O&M)
Date of decision: 11.09.2018**

Balbir Kaur @ Beero

..Petitioner

Versus

The State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Charanpreet Singh, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. DAG, Punjab
for the respondent -State.

Daya Chaudhary, J.

Petitioner-Balbir Kaur @ Beero has filed the present petition under Section 439 Cr.P.C. for grant of regular bail to her in case FIR No.140 dated 12.05.2017 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station Phillaur, District Jalandhar.

Learned counsel for the petitioner submits that as per story of the prosecution, recovery of 105 gms of intoxicating powder was effected. The FIR was registered on the basis of secret information and place of recovery was a thickly populated area but no independent witness was joined. Even no efforts were made to associate any independent witness from the locality to prove that the alleged recovery of contraband was effected from the possession of the petitioner. Learned counsel further

submits that the petitioner was initially released on interim bail till the receipt of FSL report and she never misused the concession of interim bail granted to her. Even the petitioner did not violate any of the conditions imposed upon her at the time of granting interim bail. Learned counsel also submits that there is violation of provisions of Section 50 of the NDPS Act as no valid offer was given to the petitioner at the time of search and seizure whereas compliance of Section 50 of the NDPS Act is mandatory in nature. Learned counsel also submits that as per instructions issued by the respondent-State/Department, an undertaking was given by Assistant Inspector General, GRP, Punjab, Patiala by way of affidavit that no private vehicle would be used by the Police officials without permission of the concerned authority still private vehicle was used. Learned counsel also submits that the investigation has been completed as challan has been presented and no purpose would be served by keeping the petitioner in custody. The petitioner is in custody for the last more than one year.

Learned State counsel has not disputed the custody period but has opposed the submissions made by learned counsel for the petitioner on the ground of seriousness of the offence.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

The alleged recovery effected from the petitioner is 105 gms of intoxicating powder. The petitioner was released on interim bail till the receipt of FSL report vide order dated 08.08.2017. On receipt of FSL report, the petitioner was taken into custody and since then, she is in custody. The

petitioner never misused the concession of interim bail granted to her till the receipt of FSL report. In other case of NDPS, the petitioner is on bail. It has been submitted by learned counsel for the petitioner that at the time of alleged recovery, the police party was in the private vehicle and because of that reason, registration number of the vehicle has not been mentioned. Even it has not been mentioned as to who was driving the vehicle. A detailed order was passed on 02.09.2003 by this Court in Criminal Misc. No.30579-M of 2003 by observing that Director General of Police, Punjab has to issue direction to all the subordinates not to use private vehicle without requisition in future and an affidavit was also filed by then Assistant Inspector General, GRP, Punjab before this Court. In spite of giving undertaking in the shape of affidavit, still private vehicle was used. Furthermore, in the affidavit submitted by the respondent-authority before this Court, it was also mentioned that all the SHOs of GRP Punjab are directed to make the movie of the place of recovery in NDPS cases by hiring, contracting video film makers while effecting recovery under the NDPS Act. Thereafter, instructions were issued to all the SHOs, GRP, Punjab to remind them to comply with the directions in future. In spite of undertaking and directions issued, still compliance is not there.

In view of the submissions made by learned counsel for the petitioner, the factors as mentioned above and by considering that the petitioner is in custody for the last more than one year; all the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence; the trial may take time to conclude and no purpose would be served by keeping the petitioner in

custody, the present petition is allowed and the petitioner (Balbir Kaur @ Beero) is directed to be released on regular bail subject to her furnishing bail/surety bonds to the satisfaction of the trial Court.

However, in case, the petitioner is found to be involved in any other case of NDPS, the State is at liberty to move an application for cancellation of bail.

11.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes