

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

**Criminal Misc. No. M-34198 of 2018 (O&M)
Date of decision: 22.02.2019**

Manjit Kaur @ Bholi

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. R.P. Dhir, Advocate
for the petitioner.

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

Daya Chaudhary, J. (Oral)

CRM No.43117 of 2018

This application has been moved for placing on record
Annexure P-5.

Application is allowed and Annexures P-5 is taken on record.

CRM-M No.34198 of 2018

The present petition has been filed by the petitioner under
Section 439 Cr.P.C. for grant of regular bail to her in case FIR No.77 dated
23.06.2016 registered under Section 22 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 at Police Station Garhshankar, District
Hoshiarpur.

Learned counsel for the petitioner submits that the petitioner
has falsely been implicated in the case as she was sitting in the car with her
son. The alleged recovery has been planted upon the petitioner because his
son was intercepted by the Police and the narcotic substance was handed
over to her. Learned counsel further submits that there was no reason to

give the narcotic substance to the petitioner in presence of Police official and just to implicate the petitioner, this story has been concocted. The FIR was registered after getting secret information and said secret information was not reduced into writing. Learned counsel also submits that there is non-compliance of mandatory provisions of Sections 42 and 52-A of the NDPS Act. No other case of NDPS Act is pending against her. No offer was given to the petitioner and even the lady constable, who has been shown to be present at the spot, was not competent to investigate the matter and there is non-compliance of Section 50(4) of the NDPS Act. Learned counsel also submits that there is no apprehension of absconding the petitioner. No single witness has been examined so far and all the witnesses are official witnesses and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence. The petitioner is in custody since 24.05.2018. At the most, son of the petitioner can be stated to be involved in the case as the alleged recovery was not effected from the personal possession of the petitioner.

Learned State counsel has not disputed the custody period as well as stage of trial and also the fact that main accused is son of the petitioner.

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.

Admittedly, the main accused is son of the petitioner, who was arrested at the spot. As per allegations levelled in the FIR, petitioner was sitting with the main accused in the car and while intercepted by the Police party, the alleged substance was alleged to be handed over to the petitioner.

By considering the custody of the petitioner since 24.05.2018; the fact that mandatory provisions of NDPS Act have not been followed; the search was conducted on the basis of secret information; main accused is already in custody; no other case of NDPS Act is pending against the petitioner; moreover, the petitioner is a woman and is more than 50 years of age; all the witnesses are officials and there is no possibility that the petitioner may influence the witnesses or tamper with the evidence and trial may take time to conclude as even a single witness has not been examined so far, the present petition is allowed and the petitioner (Manjit Kaur @ Bholi) is directed to be released on regular bail subject to her furnishing bail/surety bonds to the satisfaction of the trial Court.

However, it is made clear that the petitioner has been released on bail keeping in view the facts and circumstances of the case and not on custody period and the same cannot be construed as parity especially by the co-accused.

22.02.2019
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No