

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

**CRM-M No.40574 of 2019 (O&M)
Date of Decision:26.02.2020**

Lakhwinder Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Gurbir Singh Sidhu, Advocate for
Mr. Mohit Kumar, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab
for the State.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail in FIR No.285 dated 14.11.2018 under Section 22 of the NDPS Act, 1985, registered at Police Station Bhawanigarh, District Sangrur.

Learned counsel for the petitioner has, inter alia, argued that in the present case, the petitioner is in custody since 14.11.2018 and the investigation had been completed long back and challan was presented on 29.05.2019. He further states that charges were framed on 03.07.2019 and out of 11 cited witnesses, 09 have been examined. Learned counsel for the petitioner has also stated that there is no other case against the petitioner and he has been wrongly roped up in the present FIR. He has further stated that even otherwise, on merits, in the present case, the Investigating Officer

and complainant are one and the same person and, therefore, trial can get vitiated in view of the law laid down by the Hon'ble Supreme Court in *Mohan Lal Vs. State of Punjab, 2018(4) RCR (Criminal) 101*.

Per contra, learned State counsel, on instructions from ASI Kulwinder Singh, states that in the present case, challan was presented on 29.05.2019 and charges have been framed on 03.07.2019 and out of 11 cited witnesses, 09 have been examined. He has further stated that it was a case of recovery of 1000 tablets of Tramadol, which is a commercial quantity and, therefore, has opposed the grant of bail to the petitioner. However, on a query put by the Court to the learned State counsel as to whether in the present case, the Investigating Officer and the complainant are the same person, he states that it is correct that the Investigating Officer and the complainant are the same person.

I have heard learned counsel for the parties and perused the record.

So far as the long pendency of the present proceedings are concerned, it is not disputed that the investigation had been completed long back and challan was presented on 29.05.2019 and charges were framed on 03.07.2019 and out of 11 cited witnesses, 09 have been examined. It is also not disputed by the learned State counsel that there is no other case against the petitioner. So far as the assertion made by the learned counsel for the petitioner that in view of the fact that the Investigating Officer and the complainant are the same person and that the entire trial would get vitiated, is concerned, learned State counsel has not disputed the aforesaid fact.

Learned State counsel has, however, stated that since the recovery is of a

commercial quantity, therefore, grant of bail to the petitioner would be barred under Section 37 of the NDPS Act, 1985. However, I am of the view that the bar under Section 37 of the NDPS Act, 1985 is not absolute in nature and in the given circumstances, the benefit can be given on the basis of reasons recorded. Presently, there is no other case against the petitioner and it is not the case of the State that in case, the petitioner is granted bail, there is likelihood that the petitioner would influence the witnesses or temper with the evidence on record or he may commit another offence under the NDPS Act. The factual position is not disputed by the learned State counsel that in the present case, the Investigating Officer and the complainant are the same person and it is likely that on merits, no case may be made out against the petitioner. The aforesaid observations are only for the purpose of deciding the present petition.

In view of the totality and peculiar circumstances of the present case, I deem it fit to admit the petitioner to regular bail. Therefore, the present petition is allowed. It is ordered that the petitioner shall be released on bail on his furnishing bail bond/surety bond to the satisfaction of the trial Court.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

26.02.2020
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No