

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**
(219)

CRM-M-12942-2021
Date of decision:- 13.09.2021

Rajwant Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Kulwinder Singh Dhillon, Advocate for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

...

SUVIR SEHGAL, J. (ORAL)

The Court has been convened through video conferencing due to Covid-19 pandemic.

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 seeking grant of regular bail in case FIR No.121 dated 29.07.2019 registered for offence under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the NDPS Act"), at Police Station City Patti, District Tarn Taran, Annexure P-1.

As per the version of the prosecution, a polythene bag containing 1900 loose tablets of Tramadol was recovered from the roadside, which was allegedly thrown there by a lady who later identified herself as Rajwant Kaur.

Counsel for the petitioner has contended that the petitioner, who is a 66 year old lady, has been falsely framed on the basis of suspicion and recovery made has been fastened upon her. He urges that there has been a

violation of the mandatory provisions of Section 50 of the NDPS Act as the petitioner was neither searched in the presence of any Gazetted Officer nor any independent witness was made to join. He submits that on the basis of the alleged confessional statement of the petitioner, Jasbir Singh, was made an accused, who has been granted the concession of regular bail by this Court vide order dated 25.09.2020, Annexure P-3, passed in CRM-M-47749-2020. Besides the present FIR, the petitioner was arraigned as an accused in FIR No.122 dated 29.07.2019 registered under Section 22 and 29 of the NDPS Act on basis of confessional statement of same co-accused, namely, Jasbir Singh, though she has been released on bail by the trial Court. He submits that though the first petition filed by the petitioner (CRM-M-50611-2019) was dismissed by this Court on 28.09.2020, yet despite a lapse of almost one year, not even a single witness has been examined by the prosecution and the trial is at a stand still.

Per contra, learned State counsel, upon instructions from ASI, Dilbag Singh has opposed the petition on the ground that the recovery effected from the petitioner is 775.200 grams of Tramadol, which falls within the ambit of commercial quantity and the bar under Section 37 is attracted. Upon further instructions, he submits that the charge has been framed on 04.02.2020 but none out of the 11 prosecution witnesses have been examined.

I have considered the respective submissions of the counsel for the parties.

Hon'ble Supreme Court in *Union of India versus K.A.Najeeb 2021 (2) RCR (Criminal) 145* has held that once timely conclusion of the trial is not possible, the accused ordinarily deserves to be released on bail. The petitioner, who is a lady of an advanced age, is in custody for the last more than two years and one month, the trial is at its very initial stage, co-accused is on bail, therefore, this Court is *prima facie* of the opinion that the petitioner deserves to be released on bail during the pendency of the trial.

Without commenting upon the merits and de-merits of the arguments addressed by the counsel for the parties, the petition is allowed. The petitioner, namely, Rajwant Kaur, is ordered to be released on bail on her furnishing adequate bail/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate concerned.

While being released on bail, the petitioner shall furnish an undertaking to the effect that she will not get involved in the sale, purchase, trade etc. of prohibited substance and in case she violates the undertaking, it shall be open to the prosecution to seek cancellation of bail.

It is clarified that any observation made hereinabove shall not be construed to be a reflection of opinion on the merits of the case.

(SUVIR SEHGAL)
JUDGE

13.09.2021
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No