

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

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**CRM-M-14435-2020
Date of decision: 19.01.2021**

SWEETY

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Fariad Singh Virk, Advocate
for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present (first) petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.15 dated 06.12.2017 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") in Police Station STF Phase-4, Mohali to which Sections 18 and 25 of the NDPS Act were added later on.

Briefly stated, the case of the prosecution against the petitioner and her co-accused is that on 06.12.2017 on the basis of secret information as to running of network of drug smugglers by co-accused Manoj Kumar alias Mamu, the police party headed by ASI Harbhajan Singh intercepted Swift Car bearing registration No. HR01-AK-7378 and apprehended the petitioner and co-accused Gurpreet Singh @ Geja from said car. On search recovery of 75 grams of heroin from the polythene bag kept in right pocket of the pant of co-accused

Gurpreet Singh @ Geja and 270 grams of heroin, falling in the category of commercial quantity and amount of Rs.3,50,000/- stated to be drug money from a polythene bag carried by the petitioner was made. The above said FIR under Sections 21 and 29 of the NDPS Act was registered. During investigation the petitioner suffered her disclosure statement on 10.12.2017 and got recovered 20 grams of heroin and Rs.30,000/- as drug money from the dashboard of Alto K-10 car bearing registration No. HR-99-ACD-8392. Thereafter, the petitioner suffered another disclosure statement on 12.12.2017 and got recovered 116.17 grams of Opium, amount of Rs.1,91,331/-, documents of properties purchased by the petitioner and her husband and gold ornaments weighing 707.47 grams from her bank locker. Sections 18 and 25 of the NDPS Act were added. On completion of investigation charge-sheet was filed against the petitioner and her co-accused.

The petitioner being in custody since 06.12.2017 has filed the present first petition for grant of regular bail.

The petition has been opposed by the respondent-State in terms of reply filed by way of affidavit of Rajesh Kumar PPS, Deputy Superintendent of Police, Special Task Force, Rupnagar Range, Mohali filed in the Registry which is taken on record.

Custody Certificate dated 19.01.2021 has been sent by learned State Counsel through e-mail, print out of which is taken on record.

I have heard learned counsel for the petitioner and learned State counsel and gone through the record.

Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the case. The mandatory provisions of the NDPS were not complied with. No independent witness was joined during the investigation. The complainant was the Investigating Officer which caused serious prejudice to the petitioner. Alleged recovery from the petitioner of 270 grams of heroin was marginally higher than the non commercial quantity of 250 grams. Only the actual quantity of the prohibited substance is to be taken into consideration for determining as to whether the quantity of contraband falls into the category of commercial quantity. The petitioner is in custody since 06.12.2017. The prosecution evidence is yet to be concluded. The trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19 as the criminal courts are not conducting physical hearings and recording evidence. The petitioner is also vulnerable to infection of Covid-19 due to her detention in the jail. No useful purpose will be served by further detention of the petitioner. Therefore, the petitioner may be ordered to be released on regular bail.

In support of his arguments, learned Counsel for the petitioner has referred to judgments passed by Hon'ble Supreme Court in **Ouseph alias Thankchan Vs. State of Kerala and another 2004 (4) SCC 446, E.Micheal Raj Vs. Intelligence Officer, Narcotic Control Bureau 2008 (5) SCC 161, Harjit Singh Vs. State of Punjab and another 2011 (4) SCC 441 and State through Intelligence Officer Narcotic Control Bureau Vs. Mushtaq Ahmad Etc. 2016 (1)**

SCC 315.

On the other hand, learned State counsel has submitted that the petitioner is accused of having kept in his conscious possession commercial quantity of contraband. Rigors of Section 37(1)(b) of the NDPS Act are applicable to the present case. The petitioner is a previous convict in two cases and is also facing trial in three other cases under the NDPS Act. The petitioner does not deserve the grant of regular bail. Therefore, the petition may be dismissed.

Mere longevity of detention and vulnerability to infection of Covid-19 are no grounds for release on bail as nature of accusation, gravity of the offences and quantum of sentence have also to be taken into consideration. Due to the offences allegedly committed by the petitioner being punishable under the NDPS Act with rigorous imprisonment for a term not less than ten years which may extend to twenty years, and to fine not less than one lakh rupees which may extend to two lakh rupees the case of the petitioner was not covered for release on bail under the orders of the High Powered Committee constituted in pursuance to the directions of Hon'ble Supreme Court in SMWP (C) No. 1/2020. The mere fact that the working of the Courts is affected due to restrictions imposed to prevent spread of Covid-19 is also by itself no ground for grant of bail to the petitioner. The judgments relied upon by learned Counsel for the petitioner are also of no help to the petitioner as it is well settled that orders granting/declining bail cannot be treated as judicial precedents of binding nature. Reference in this regard may be made to judgment of

Hon'ble Supreme Court in **Gajanand Aggarwal Vs. State of Orissa and others 2006 (4) RCR (Criminal) 311** wherein it was held that orders of bail are not necessarily orders of any precedent value. Delay in trial is by itself no ground for grant of bail as the trial can also be expedited. The restrictions imposed to prevent spread of infection of Covid-19 have now been eased out and now the trial Court can be directed to expedite the trial. In view of the observations made by Hon'ble Supreme Court in **Hira Singh Vs. Union of India 2020 (2) RCR (Criminal) 523** total quantity of the contraband has to be taken into consideration for determining as to whether the same falls into the category of commercial quantity. The questions as to non-compliance of the mandatory provisions of the NDPS Act and the effect of not joining of independent witness and complainant being investigating officer can be determined on the basis of evidence to be produced during trial and cannot be gone into at this stage as this Court is not required to judge/weigh intrinsic evidentiary value or sufficiency of the material to be translated into evidence against the petitioner. Since the petitioner is alleged to have kept commercial quantity of the contraband in her conscious possession, rigors of Section 37(1)(b) of the NDPS Act are applicable to the case. There are no reasonable grounds for believing that the petitioner had not committed the offences punishable under the NDPS Act and that the petitioner will not commit any offence under the NDPS Act if released on bail. The petitioner was convicted in two cases under the NDPS Act and is facing trial in three cases under the NDPS Act. In **State of Kerala Vs. Rajesh 2020 (1) RCR**

(Criminal) 818 Hon'ble Supreme Court has observed that the liberal approach in matter of bail under the NDPS Act is uncalled for. In these facts and circumstances of the case but without commenting on merits, I am of the considered view that the petitioner does not deserve the concession of regular bail and the petition deserves to be dismissed. Accordingly, the petition is dismissed.

However, in view of the observations made by Hon'ble Supreme Court in **Doongar Singh Vs. State of Rajasthan 2018 (1) RCR Criminal 256, State of U.P. Vs. Shambhu Nath Singh and others, 2001 (2) R.C.R. (Criminal) 390, Hussain and another Vs. Union of India 2017(2) RCR Criminal 312 and Thana Singh Vs. Central Bureau of Narcotics 2013(1) R.C.R(Criminal) 861**, the trial Court is directed to expedite the trial and record prosecution evidence expeditiously preferably within a period of three months from the date of receipt of copy of this order by pre-poning the case, if so required and by conducting trial on day to day basis by allocating block of dates for the trial as directed by Hon'ble Supreme Court and by issuing coercive process for securing presence of the witnesses.

In case of non-appearance of official witnesses, the trial Court shall take appropriate action against the concerned police officials absenting without any lawful excuse by filing complaint under Section 174 of the Indian Penal Code, 1860 or taking proceedings under Section 350 of the Cr.P.C. against them.

The observations made by this Court are strictly for the purpose of disposal of the present petition and nothing in this order

shall be treated as expression of any opinion on merits of the case so as to bind or influence the trial Court in adjudication of question of guilt or innocence of the petitioner.

A copy of this order be sent to the trial Court concerned for requisite compliance.

19.01.2021

kavneet singh

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No