

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

CRM-M-27557-2020
Date of decision: 28.01.2021

Pooja @ Ruby

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Jaspreet Singh, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 27 dated 15.03.2019, registered under Sections 21/61/85 of the NDPS Act at Police Station Lohian, District Jalandhar.

The first petition, bearing CRM-M-27692-2019, was dismissed on 29.01.2020. The operative part of the order reads as under:

“On 08.01.2020, following order was passed by this Court in CRMM-27692-2019: -

“During the course of arguments, learned counsel for the petitioner submitted that in the copies supplied to petitioner along with the report filed under Section 173 Cr.P.C., in the notice under Section 50 of the NDPS Act, the Investigating Officer has given the options that the accused can be searched either by him (Investigating Officer) or by a gazetted officer or by a Magistrate and further submitted that no lady police officer was present at the spot while conducting the search of

the petitioner. Learned State counsel, on instructions from ASI Mandeep Singh, on verification of the documents attached with the challan, has not disputed this fact, however, submitted that in the original notice, which is signed by the petitioner, no such option of being searched by the Investigating Officer has been given and even SI Amandeep Kaur has also been shown present at the spot. Since there is variation in the documents of the police, the S.S.P. concerned is directed to file a specific affidavit after verifying the record and challan which is presented before the Court. List again on 29.01.2020.”

In pursuance of the aforesaid order, affidavit of the Senior Superintendent of Police, Kapurthala has been filed in the Court today and in para No.5 (iii) of this affidavit, it is stated that report under Section 173 Cr.P.C. was prepared by Inspector Dalbir Singh on 24.05.2019, wherein it has been stated that while giving notice under Section 50 of NDPS Act that petitioneraccused Pooja @ Ruby can get search of herself and her purse conducted from the Investigating Officer or from any Gazetted Officer or from some Magistrate, however, in the non-consent memo, it is not mentioned so. It is further stated that with regard to carelessness and negligence on the part of the Investigating Officer/Inspector Dalbir Singh, departmental proceedings have been initiated against him.

Learned counsel for the petitioners has argued that as per allegations in the FIR, the police party received an information that petitioners petitioner Veerjodh Singh @ Ruldu and Pooja @ Ruby are coming with heavy

quantity of heroine from their village and if a raid is conducted, they can be apprehended. It is further submitted that in the FIR, it is mentioned that one Lady Constable Harpreet Kaur, 1961 was also part of the police party, however, when the petitioners were apprehended, she was not asked to join the investigation for the purpose of conducting personal search of petitioner Pooja @ Ruby in terms of Section 51 (4) of NDPS Act and rather one Lady SI Amandeep Kaur was called and even her presence is doubtful as per the documents attached to the report under Section 173 Cr.P.C..

Learned State counsel has submitted that petitioner Pooja @ Ruby is involved in two more cases i.e. FIR No.36 dated 12.04.2017 under Sections 22/61/85 of NDPS Act, Police Station Lohian, District Jalandhar and FIR No.57/2018 under Sections 22/61/85 of NDPS Act, Police Station Goindwal, District Tarn Taran, however, she is on bail in those FIRs, as recovery effected from her was of non-commercial quantity. Learned State counsel, on instructions from DSP Piara Singh, has further submitted that there is a procedural defect in preparation of the report under Section 173 Cr.P.C., though petitioners Pooja @ Ruby and Veerjodh Singh @ Ruldu were found carrying 01 kg and 1.5 kg of heroine, respectively.

After hearing learned counsel for the parties, considering the fact that petitioner Pooja @ Ruby is involved in two more FIRs, despite there being defect in the investigation and she is habitual offender and also in view of judgment of the Hon'ble Supreme Court passed in Criminal Appeal Nos.154- 157 of 2010 (arising out of SLP (Crl.) Nos.7309-7312 of 2019) State of Kerala etc. Vs. Rajesh etc., no opinion can be formed that the petitioners, if

released on bail, will not indulge in such type of activities again in future, I find no ground to grant regular bail to the petitioners at this stage.

Accordingly, both these petitions are dismissed.”

Learned counsel for the petitioner submits that the new ground for filing the present petition is that despite the charges having been framed on 02.07.2019, till date no prosecution witness has been examined and a period of about one year has passed when the first bail application of the petitioner was dismissed by this Court.

Learned counsel for the petitioner further submits that though the petitioner is involved in two more FIRs, however, she is on bail in those cases as noticed in aforesaid order dated 29.01.2020.

Learned counsel further submits that petitioner is a lady, aged about 32 years, and she has to take care of her minor daughter aged about 03 years and, therefore, in view of the existing COVID-19 situation, wherein though actual hearings have started, however, due to heavy backlog, the Courts are not in a position to record the evidence in all the cases as priority is given to old cases, the petitioner may be enlarged on regular bail.

Learned State counsel has filed the custody certificate, as per which, the petitioner is in judicial custody for the last about one year and ten months and she is involved in two more FIRs i.e. FIR No. 57 dated 17.04.2018 and FIR No. 36 dated 12.04.2017, both under Section 21 of the NDPS Act.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the long custody of the petitioner and also in view of the fact that conclusion of trial is likely to take some time, the instant petition is

disposed of and the petitioner is ordered to be released on interim bail till 31.05.2021 on her furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

However, the trial Court, after assessing the situation, if the trial has not started in ordinary course and the evidence is recorded, may cancel or may continue the interim bail granted to the petitioner till further orders.

28.01.2021

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No