

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

102

**CRM-M-33532-2019
Date of decision: 01.04.2021**

Amarjit Kaur @ Amaro

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

Mr. Rana Harasdeep Singh, DAG, Punjab
for the respondent-State with
ASI Nishan Singh.

ARUN KUMAR TYAGI, J (Oral)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.21 dated 30.01.2019 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') and Section 473 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Sadar, District Patiala.

As per the prosecution version on 30.01.2019 police party headed by ASI Beant Singh CIA Samana present in the area of Grain Market, Balbera received secret information that Jaswinder Singh @ Sarpanch and Amarjit Kaur (the petitioner) were doing the business of selling opium and were going from Chika to Patiala via Balbera in white Pajero with fake number plate while carrying opium in heavy quantity. Ruqa was sent to the police station on the basis of which the FIR was registered. Jaswinder Singh @ Sarpanch and the petitioner were apprehended and recovery of 3 kgs. of opium was made from box in the dickey of the Pajero car. During investigation, Jaswinder Singh @ Sarpanch made disclosure statement and got recovered opium

weighing 400 gram from dashboard of Audi car parked at the house of the petitioner. On completion of investigation the petitioner and her co-accused have been charge-sheeted by the police to face trial.

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

The petition has been opposed by learned State Counsel in terms of reply filed by way of affidavit of Sh. Ajay Pal Singh, PPS, Deputy Superintendent of Police (Rural), Patiala.

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

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case on the basis of secret information. Recovery of 3 kgs. of opium was made from the box in the dickey of the Pajero car and from dashboard of Audi car at the instance of co-accused Jaswinder Singh @ Sarpanch. No recovery was made from the petitioner. The petitioner is not owner of the Pajero car and Audi car in question. Pajero car is stated to be owned by co-accused Jaswinder Singh @ Sarpanch and Audi car was also parked at the house of the petitioner by him. Co-accused Jaswinder Singh @ Sarpanch had the exclusive knowledge regarding opium recovered from dickey of the Pajero car and dashboard of the Audi car. The petitioner cannot be said to be in conscious possession of the contraband allegedly recovered from the dickey of Pajero car and from the dashboard of Audi car parked at the house of the petitioner at the instance of co-accused Jaswinder Singh @ Sarpanch. Mandatory provisions of the NDPS Act were not complied with. Rigors of Section 37(1)(b) of the NDPS are not applicable qua the petitioner. The petitioner is not involved in any other case under the NDPS Act. The petitioner is in custody since 30.01.2019. Trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19. No useful purpose will be served by her further detention in custody. Therefore, the petitioner may be ordered to be released on bail.

On the other hand, learned State Counsel has argued that the petitioner is accused of being in conscious possession of

commercial quantity of contraband along with her co-accused Jaswinder Singh @ Sarpanch. The petitioner is habitual offender and was involved in 20 other cases some of which are still pending and was declared proclaimed offender in some of the cases. In view of the nature of accusation and gravity of offences, the petitioner does not deserve the concession of regular bail. Therefore, the petition may be dismissed.

However learned State Counsel has conceded that the petitioner was earlier involved in one case under the NDPS Act in which she was acquitted and that at present the petitioner is not involved in any other case under the NDPS Act.

In reply learned Counsel for the petitioner has submitted that the petitioner had surrendered in the cases in which she was alleged to have declared proclaimed offender and at present only one case is pending against her.

In view of the facts and circumstances of the case, nature of accusation and evidence against the petitioner, involvement of debatable question as to whether the petitioner can be said to be in conscious possession of the contraband recovered from dickey of Pajero car and dashboard of Audi car at the instance of co-accused Jaswinder Singh @ Sarpanch, non-involvement of the petitioner in any other case under the NDPS Act, consequent inapplicability/due satisfaction of rigors of Section 37 of the NDPS Act, period of her custody and the fact that trial is likely to take long time due to restrictions imposed to prevent spread of infection of Covid-19, but without commenting on the merits of the case, I am of the considered view that the petitioner deserves the concession of regular bail.

Therefore, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of bail bonds to the satisfaction of the trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.

However, bail is granted to the petitioner subject to the condition that she will not commit any offence under the NDPS Act after her release on bail and in case of involvement of the petitioner in

commission of any offence under the NDPS Act in future, her bail in the present case shall also be liable to be cancelled on application to be filed in this regard.

01.04.2021

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(ARUN KUMAR TYAGI)
JUDGE

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