

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

CRM-M-11469-2022
Date of Decision:-**31.10.2022**

KIRNA KAUR	Versus	... Petitioner
STATE OF PUNJAB		... Respondent

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Siddharath Gupta, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, AAG, Punjab.

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KARAMJIT SINGH, J. (Oral)

The petitioner has approached this Court seeking grant of regular bail in a case having FIR No.21 dated 20.5.2021 registered under Section 22 of NDPS Act (Section 29 of NDPS Act added later on) at Police Station Jaurkian, District Mansa.

The counsel for the petitioner has contended that petitioner is a lady aged about 45 years and is in custody since 20.5.2021. The counsel for the petitioner further submits that the petitioner has been falsely implicated in the present case. The counsel for the petitioner further submits that from the perusal of the short reply filed by way of affidavit of Mr. Gobinder Singh, DSP, Sub-Division Sardulgarh District Mansa, it appears that Form No.29 was prepared by the Investigating Officer for the first time, when the inventory of the case property was prepared before the learned Illaqa

Magistrate and thus the link evidence is missing in this case as Form No.29 was not prepared by the Investigating Officer at the spot of alleged recovery. The counsel for the petitioner further submits that there was also violation of mandatory provision of Section 50 of NDPS Act as no proper offer was given to the petitioner before the alleged recovery was effected. The counsel appearing on behalf of the petitioner further submits that earlier the petitioner was released on interim bail till the receipt of report of FSL and immediately thereafter the petitioner surrendered and is now in custody since 14.2.2022. The counsel for the petitioner further submits that the trial is not proceeding further after the framing of the charges. So prayer is made that the petitioner be granted concession of regular bail.

The present petition is opposed by the State counsel, who submits that the present case is relating to recovery of commercial quantity of medical intoxicants from the petitioner, who was arrested and apprehended by the police on 20.5.2021. The State counsel further submitted that no chain is missing in the link evidence and even as per the short reply filed on behalf of the State, it is clear that Form No.29 was prepared at the place of recovery. The State counsel has further submitted that in the present case the recovery was effected from the polythene bag which the petitioner was carrying in her hand and the petitioner gave her consent to the Investigating Officer to conduct the search of said polythene bag and the said search resulted into recovery of commercial quantity of medical intoxicants. The State counsel has further submitted that in case the petitioner was granted interim bail till the receipt of report of FSL and immediately thereafter she surrendered that does not mean that the petitioner

is entitled to get benefit of regular bail as a matter of right. The State counsel has further submitted that embargo provided under Section 37 of NDPS Act is applicable to the instant case and as such petitioner is not entitled to get concession of regular bail at this point of time when the trial is going on.

I have considered the submissions made by counsel for the parties and perused the original record of the trial Court.

As per the allegations appearing on the record, police apprehended the petitioner on 20.5.2021 and 50 strips each containing 9 tablets of Tredol-100 (Tramadol Hydrochloride tablets 100 mg) were recovered from the polythene bag which the petitioner was carrying in her hand. As per the report of the FSL, the said medical intoxicants come under commercial quantity of contraband. Form No.29 dated 20.5.2021 is available on the record of the trial Court and thus the contention raised by counsel for the petitioner that Form No.29 was not filled at the spot of recovery, is untenable.

Further this Court is of the view that the provisions of Section 50 of NDPS Act are not applicable to the instant case as the alleged recovery of contraband was not from the person of the petitioner and rather was effected from the polythene bag which she was carrying in her bag. In this context, reference is made to **State of Himachal Pradesh vs. Pawan Kumar (2005) 4 SCC 350**, wherein it was held that a bag, briefcase or any such article or container etc. can, under no circumstances be treated as a body of a human being.

The petitioner was arrested at the spot on 20.5.2021 and later on vide order dated 22.6.2021, she was granted interim bail till the receipt of FSL and immediately after the receipt of report of FSL, the petitioner surrendered on 14.2.2022 and since then the petitioner is in custody. As has been stated by the State counsel, the petitioner is not involved in any other criminal case.

However, this Court is of the view that long incarceration (if any), clean antecedents and the fact that the petitioner had not misused the concession of interim bail, would not be sufficient to outweigh the rigors of Section 37 NDPS Act, the present case being covered under the said provision of law and it being a case of recovery of commercial quantity of contraband.

Consequently, it is held that the petitioner is not entitled to grant of regular bail at this stage, when the trial is going on. Accordingly the present petition is hereby dismissed. However, any observations made hereinabove shall not be construed as expression of opinion on the merits of the case. As the FIR in this case was registered on 20.5.2021 and the petitioner is in custody, the trial Court is hereby directed to expedite the trial.

The record of the trial Court be returned immediately along with the copy of this order.

(KARAMJIT SINGH)
JUDGE

31.10.2022
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No