

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-12492-2022

Date of decision: 31st March, 2022

Robina

Petitioner

Versus

State of Punjab

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. J.S.Thankur, Advocate for the petitioner.

Mr. Amit Mehta, Sr. Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J (Oral):

This petition is filed seeking regular bail in the case of FIR No. 114 dated 25.8.2021 under Sections 21 and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and Section 29 of the Act (added later on), registered at P.S. Shimlapuri District Ludhiana.

As per case set up, police party acting on a secret information on 25.8.2021 conducted a raid at the house of Balvinder Kaur and Karnail Singh. From the conscious possession of the petitioner, 1200 tablets of ALPRAX 0.5 with an average weight of 151 mg/ tablets were recovered. Some of the accused fled away from the spot.

Learned counsel for the petitioner submits that the petitioner is a married lady and had come to her parental house, if she had any intention she would have also fled away from the spot along with the other accused.

He further argues that there was non-compliance of Section 42 and 50 of the Act as search was not conducted by a Gazetted Officer.

Learned State Counsel opposes the prayer and submits that recovery is of commercial quantity and petitioner is involved in an another FIR No. 85 dated 30.5.2016 under the Act. He further submits that the petitioner has not approached the Court with clean hands and withheld the information with regard to her involvement in the earlier FIR.

The relevant paragraph No. 18 of the petition is quoted herein below:-

“That as per the instruction there are other cases registered against the petitioner except the present one and has not been declared Proclaimed offender in an other case.”

As per the custody certificate received the petitioner was involved in FIR No. 85 dated 13.5.2016 filed under the Act and was in custody for 28 days. The said aspect has been withheld while filing the present petition.

Be that as it may, considering the stringent provisions of Section 37 of the Act, no case is made out for grant of bail.

The recovery from the petitioner is of commercial quantity. The petitioner was involved in an another FIR under the Act. As per the twin conditions of Section 37 of the Act, the Court has to *prima facie* satisfies itself on reasonable grounds that the accused is not guilty of the offence and secondly, is that he is not likely to commit any offence while on bail. In the present case, the involvement of the petitioner in earlier case under the Act leave no room for fulfilment of the second condition. Moreover, the contention of non-compliance of Section 50 of the Act, is

prima facie not maintainable as there is consent memo signed by the petitioner for her search. Any further comment made on the merits of the contention raised by the petitioner would have an affect on the trial.

Similarly, the contention of non-compliance of Section 42 need not be dwelled upon at this stage.

The Supreme Court in the judgment passed in ***Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan, AIR 2021 SC 4476*** held as follows :-

“29. In the complaint that was filed on 16 October 2019 it is alleged that at about 1400 hours on 26 March 2019, information was received that between 1500-1700 hours on the same day, the three accused persons would be reaching Uttar Pradesh. The complaint states that the information was immediately reduced to writing. Therefore, the contention that [Section 42](#) of the NDPS Act was not complied with is prima facie misplaced. The question is one that should be raised in the course of the trial. “

(emphasis supplied....)

Petition is dismissed, accordingly.

However it is clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

[AVNEESH JHINGAN]
JUDGE

31st March, 2022
anuradha

1. Whether speaking/ reasoned	:	Yes /No
2. Whether reportable	:	Yes /No