

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

**CRM-M No. 17143 of 2021 (O&M)
Date of Decision: 28.07.2022**

Rajwinder Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Prateek Pandit, Advocate,
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

1. Present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for seeking regular bail pending trial in FIR No. 105 dated 10.12.2017, under Section(s) 22, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “the Act”), registered at Police Station Fatehgarh Panjtoor, District Moga.
2. As per FIR, on the basis of suspicion, one lady carrying a black polythene bag in the area of Village Daule Wala (Moga) was apprehended by the police party, who later on disclosed her name as **Rajwinder Kaur (petitioner herein)**. After conducting the search of polythene bag, intoxicant powder weighing 255 grams, containing salt Alprazolam was recovered from her custody, which falls under the commercial quantity.
3. This Court, on 30.04.2021, granted interim bail to petitioner in the following manner:-

“ Inter alia contends that as per the allegations of prosecution itself, no offer for search of petitioner was made by any female police officer at the time of the alleged

recovery.

Learned State counsel seeks time to have instructions to that effect.

Posted on 13.07.2021.

Till the next date of hearing, let petitioner be released on interim bail, in this case, subject to the satisfaction of learned Trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.”

4. Learned counsel for petitioner submits that recovery in this case is alleged to have been effected by ASI Jaswinder Singh, thus, there is violation of mandatory provision of Section 50 (4) of the Act. He further submits that after grant of interim bail, petitioner has been regularly appearing before the Court below, but there is no progress of trial at all. Again contended that petitioner is not involved in any other criminal case except present FIR. Lastly contended that there is no apprehension or allegation that in case petitioner is granted regular bail, she is likely to threat the prosecution witnesses or hamper the trial in any manner.

5. Learned State Counsel, on instructions from ASI Sukhwinder Singh, does not dispute the above factual position; rather acknowledged that out of total 12 prosecution witnesses, none has been examined till date.

6. In view of the above, there is no hesitation to record twin-test satisfaction in terms of Section 37 of the Act to the following effect:-

(i) As noticed in para-4, *prima facie* there is a violation of Section 50 (4) of the Act at the time of seizing the alleged contraband; thus, it can be termed as a reasonable ground for believing that petitioner is not guilty of offence at this stage;

(ii) Petitioner was granted interim bail and has not misused the concession thereof; thus she is not likely to commit any

offence in case released on regular bail. ”

7. In such a situation, sending the petitioner in custody at this stage would not serve any purpose. Consequently, the present petition is **allowed**. Interim bail granted to the petitioner, vide order dated 30.04.2021, is made absolute. She shall be admitted to bail on her furnishing bail/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

8. Petitioner shall fully co-operate with the learned trial Court without seeking any unnecessary adjournments.

9. The above observations may not be construed as an expression of opinion on the merits of the case.

10. It is clarified that in case there is any misuse of concession of bail on the part of petitioner, State of Punjab would be at liberty to move an appropriate application for recalling of this order.

July 28, 2022

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**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>