

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

**CRM-M-18727-2021
Date of Decision : 19.07.2022**

Lakhwinder Kaur @ Lakho

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

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

Mr. Devinder Bir Singh, DAG, Punjab.

JASGURPREET SINGH PURI, J (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in case FIR No.134 dated 15.10.2020, registered under Sections 22 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'the Act'), at Police Station STF Wing, Phase IV, Mohali, District SAS Nagar.

Learned counsel for the petitioner submitted that the petitioner is a lady aged 28 years and is having a minor son aged about three years and she has been falsely implicated in the present case by the police. He submitted that the petitioner has got clean antecedents and she is not involved in any other case. He further submitted that the petitioner is in custody from 15.10.2020 which is almost 1 year and 09 months. The charges against the petitioner were framed by the learned trial Court on 15.02.2021. Now it is almost 1½ years but the trial is not progressing. The present case pertains to NDPS Act and the witnesses are the official witnesses

including the persons who are allegedly the part of the police party. He submitted that despite the fact that number of times the Court summoned these witnesses and on two occasions evenailable warrants were issued but they did not appear and till date only two of the official witnesses have been examined and that too examination-in-chief only. He submitted that as per the allegations, there was alleged recovery of 4000 tablets of Tramadol and 1800 tablets of Alprazolam from the petitioner while she was walking and as per the allegations she was carrying a bag in her hand which was detected by the police on the basis of a secret information. He submitted that the petitioner is neither involved in any drug trade nor she is involved in any other case and it was only because of the rivalry that she was falsely implicated and that was the reason as to why the prosecution witnesses are not coming forward despite repeated opportunities being granted to them and there is no justifiable reason as to why the official witnesses are not deposing before the Court. Learned counsel for the petitioner further submitted that the petitioner who is a lady of the age of 28 years, has faced incarceration for about 01 year and 09 months and she has not been able to look after her minor child aged about 03 years due to same.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody from 15.10.2020 which is almost 01 year and 09 months and qua the petitioner charges were framed on 15.02.2021. He submitted that thereafter the supplementary challan was presented pertaining to the other co-accused also and subsequently charges were framed qua them also. He submitted that it is correct that the petitioner is not involved in any other case and she is a lady of 28 years having a minor child of about three years. He has, however, opposed the regular bail of the petitioner on the ground that the prayer of the petitioner is hit by the bar contained under Section 37 of the Act.

I have heard learned counsel for the parties.

The petitioner is a lady of the age of 28 years and having a minor son of

the age of about 03 years and is admittedly not involved in any other case as per the learned counsel for the parties. As per the prosecution story, she was caught while carrying a bag from which there was a recovery of 4000 tablets of Tramadol and 1800 tablets of Alprazolam. No independent witness had been joined the present case. During the course of arguments, learned counsel for the petitioner has supplied the photocopy of the zimni orders, passed by the learned trial Court after framing of the charges qua the petitioner. The said photocopies of the orders are hereby directed to be placed on record as Mark 'X'. A perusal of these orders would show that after the framing of the charges qua the petitioner, summons were issued to the official witnesses and vide order dated 02.03.2021, it was observed by the learned trial Court that summons issued to ASI Piara Singh, LC Hardeep Kaur and ASI Avtar Singh were received back duly served. These witnesses were again summoned through bailable warrants in the sum of Rs.10,000/- each with one surety in the like amount each for 22.03.2021. On that date, it was observed by the trial Court that bailable warrants issued to ASI/SI Piara Singh, LC Hardeep Kaur and ASI Avtar Singh were received back duly served but they did not appear and, therefore, fresh bailable warrants were again issued for 12.04.2021. The matter was adjourned from time to time since at that point of time there was an apprehension of outbreak of COVID-19 but when again the matter was taken up after the COVID period on 24.05.2021, again no PW was present and they were summoned for the next date as per previous order. Again on 15.06.2021, no PW was present and they were again summoned as per the previous order. In the meantime, supplementary challan against the other co-accused was presented and the charges were framed against them as well. On 03.09.2021, three PWs who were summoned, had come but they were not examined since the Court time was over and they were bound down for 21.09.2021. However, on that date, PW ASI Piara Singh made a written request for adjournment and the

other witness namely LC Hardeep Kaur was present but was not examined by the Public Prosecutor, since he wanted to examine the IO first and, therefore, again summons were issued. On 12.10.2021, again no PW was present and fresh summons were issued. The same was the position on 01.11.2021 and no PW was present and summons were issued. Thereafter on 24.11.2021, two PWs ASI Avtar Singh and LC Gurpreet Kaur were present and were examined in-chief only but their cross-examination was deferred and as per learned counsel for the parties, they have not been examined till date. Again on 10.12.2021, no PW was present. Thereafter, again for sometime, the matter was adjourned because of the apprehension of COVID-19 Pandemic but when again the matter came up for hearing before the trial Court on 31.01.2022 no PW was present and the same was the position on the subsequent date on 21.02.2022. Thereafter, one other PW LC Gurpreet Kaur was examined and no other PW came forward. On 19.04.2022, again bailable warrants were issued against SI Piara Singh, who was although served but did not appear. Thereafter, again the matter was adjourned from time to time because no PW was present. Perusal of the aforesaid orders would show that for about 1½ years, the prosecution witnesses could not be examined because they did not appear despite repeated summons and bailable warrants issued to them except that one witness was examined in-chief only and another PW namely LC Gurpreet Kaur was examined on a later date.

On a specific query being put to learned State counsel as to what is the justification with the prosecution for not deposing before the Court despite issuance of bailable warrants, he was not able to answer the same. The prosecution is launched and the criminal law machinery is put into motion by the prosecution itself and in the matters concerning NDPS Act, the prosecution witnesses are the official

witnesses only unless there is an independent witness. The police party which allegedly raided and caught the petitioner is supposed to depose before the Court within some reasonable time and it is not understandable as to why the trial Court had to repeatedly issued summons and bailable warrants to the prosecution witnesses who themselves have put the criminal law into motion. Therefore, the arguments raised by learned counsel for the petitioner that the petitioner, who is a lady, has been falsely implicated, deserves due consideration. It can be inferred that the delay in trial has been caused only on the part of the prosecution and the result of the same is that the petitioner being a lady of the age of 28 years who is not involved in any other case has suffered incarceration for about 1½ years. Therefore, considering the first ingredient for making a departure from bar contained under Section 37 of the Act, this Court at this stage has prima facie reasons to believe that the petitioner is not guilty of the offence in view of the conduct of the prosecution, as aforesaid. So far as, second ingredient for making departure from Section 37 of the Act is concerned, the same also stand fulfilled in view of the fact that the petitioner has clean antecedents and is not involved in any other case and more so it is neither the case of the State nor it has been argued by learned State counsel that in case the petitioner is released on bail she may repeat the offence or may abscond from justice. Therefore, both the ingredients for making departure from the bar contained under Section 37 of the NDPS Act stand fulfilled at this stage.

In view of the aforesaid position, this Court is of the view that the present petition deserves to succeed. Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds/surety bonds to the satisfaction of the concerned Chief Judicial Magistrate/Trial Court/Duty

However, anything observed herein above shall have no effect on the merits of the case and is meant for deciding the present petition only.

19.07.2022		(JASGURPREET SINGH PURI)
mamta		JUDGE
	Whether speaking/reasoned	Yes/No
	Whether Reportable	Yes/No