

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30947-2022
Date of Decision: 10.10.2022

Malkit Kaur

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Judgepreet Singh Warring, Advocate, for the petitioner.

Mr. Kunal Vinayak, AAG, 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 FIR No. 10 dated 25.01.2022, under Section 22(C) of NDPS Act, registered at Police Station Nehianwala, District Bathinda.

The learned counsel for the petitioner has submitted that the petitioner is in custody from 25.01.2022 which is approximately 9 months. He submitted that the investigation of the case has already been completed and thereafter, the challan has been presented before the competent Court. He submitted that the petitioner is a lady of the age of 43 years and as per the prosecution story, she was only a pillion rider on the motorcycle and as per the FIR, the other co-accused namely Gurdit Singh was carrying a backpack bag on his shoulder from where there was an alleged recovery of

2100 tablets of Tramadol. He further submitted that there was no recovery from the present petitioner and she was only a pillion rider and took a lift and apart from the same, the petitioner is not involved in any other case and has got clean antecedents and has been falsely implicated in the present case only because she was sitting on a motorcycle and has got nothing to do with the present offence.

On the other hand, Mr. Kunal Vinayak, learned Assistant Advocate General, Punjab has submitted that so far as the custody period of the petitioner is concerned, the same is correct and there was no recovery from the present petitioner and even as per the FIR, the recovery was from the other co-accused who was carrying a backpack bag from which the recovery was effected. He submitted that it is also correct that the petitioner is not involved in any other case and has got clean antecedents and investigation of the case has been completed and thereafter the challan has been presented before the competent Court.

I have heard the learned counsel for the parties.

It is a case where the petitioner is a lady of the age of 43 years and the only allegation against her was that while she was sitting as a pillion rider on a motorcycle, then the person who was driving the motorcycle was carrying a backpack bag from which there was an alleged recovery of 2100 tablets of Tramadol. The petitioner is not involved in any other case and has got clean antecedents. Since the recovery from the co-accused was of 2100 tablets of Tramadol which falls in the category of commercial quantity under the NDPS Act, the provisions of Section 37 of the NDPS Act are required to be considered in this regard. It is a case where there is nothing

on the record or in the arguments raised by the learned State counsel to show as to how the petitioner was connected with the present offence. A mere fact that the petitioner being a lady was sitting on the motorcycle as a pillion rider cannot show any connectivity with the person who was driving the motorcycle. For the purpose of considering the grant of bail, the aforesaid factor accompanied with the fact that the petitioner is not involved in any other case has to be considered as a whole. On a specific query being raised to the learned State counsel as to how the petitioner was connected to the person who was driving the motorcycle, he stated that Aadhar Cards of the petitioner and other co-accused were recovered from the motorcycle. This Court is of the view that the recovery of the Aadhar Card from a person himself or herself would not be any avail to the State for the purpose of connecting the petitioner with the present offence.

This Court would not go into the merits with regard to the aforesaid position but for the purpose of considering the prayer of the petitioner who is a lady of the age 43 years for the purpose of grant of regular bail only, the aforesaid factor can certainly be considered.

In view of the aforesaid position, this Court is of the view that at least at this stage, this Court has reasons to believe that the petitioner is not guilty of offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it has been stated by the learned counsel for the parties that the petitioner is not involved in any other case and has got clean antecedents nor it is the case of the learned State counsel that in case the petitioner is released on bail, then she may repeat the offence or may abscond from justice. Therefore,

both the conditions for making a departure from the bar contained under

Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

10.10.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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