

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

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**CRM-35095-2021 (O&M)
Date of Decision : 31.05.2022**

Darshan Kaur

...Petitioner

versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kunwar Rajan, Advocate, for the petitioner.

Mr. K.K.Bheniwala, Addl. AG Punjab.

ALKA SARIN, J. (Oral)

This is the second petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.67 dated 25.07.2020 registered under Section 22/29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') at Police Station City-Kurali, District S.A.S.Nagar (Mohali). The first petition filed by the petitioner being CRM-M-39094-2020 was dismissed as withdrawn vide order dated 01.12.2020.

Learned counsel for the petitioner would contend that in the present case the petitioner has been in custody since 25.07.2020 and despite the challan having been filed on 24.08.2020, till date no prosecution witness has been examined. Learned counsel would further contend that the official witnesses were not appearing in the present case and vide order dated 13.05.2022 bailable warrants have been issued qua LC Antarpreet Kaur, SI Gurpreet Singh and Constable Harpreet Singh.

Status report has been filed in compliance of the last order dated 23.05.2022 by way of an affidavit of Mr. Amarpreet Singh, PPS, Deputy Superintendent of Police, Sub Division, Kharar-II, District SAS Nagar (Mohali). It is not denied that the official witnesses have not appeared and that bailable warrants have been issued. However, it is stated that the witnesses have been told to attend the Court to get their statements recorded as and when summoned failing which appropriate action will be taken against the erring officials. The status report is totally silent as to why the said official witnesses have not been appearing compelling the Trial Court to issue bailable warrants qua the said official witnesses.

On a pointed query put by the Court as to what action has been taken against the said official witnesses for not appearing before the Trial Court, the learned State counsel, on instructions from ASI Bhupinder Singh, states that he is not aware of the same. However, from a perusal of the status report it appears that no action has been taken against the said witnesses. Qua the two other queries put by the Court it has been clarified that there was a subsequent order passed by the Judicial Magistrate, Ist Class, Kharar correcting the clerical mistake and that is why four Forms 29 exist. However, the same would be a matter of trial.

Keeping in view the above and the fact that the official prosecution witnesses are not appearing before the Trial Court and bailable warrants have had to be issued for their presence and the fact that despite the challan having been filed on 24.08.2020 no witness has been examined till date, I find this to be a fit case to grant the concession of regular bail to the

petitioner. The petitioner is directed to be released on bail subject to her furnishing bail bonds/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate/Trial Court concerned.

However, the Prosecution will always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

It is also made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

Disposed off. Pending applications, if any, also stand disposed off.

A copy of this order be sent to the Inspector General of Police, Punjab to take appropriate action against the erring officials who have not been appearing before the Court below for getting their statements recorded.

May 31, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO