

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

207

CRM-M-35082-2021

Date of decision: 23.03.2022

NIRMALA

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present : Mr. Gurpal Singh Sandhu, Advocate
for the petitioner.

Mr. V.G.Jauhar, Senior DAG, Punjab
for the respondent-State.

SANT PARKASH, J. (ORAL)

(The case has been taken up for hearing through video conferencing.)

Prayer in this petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner, in case, FIR No. 149 dated 31.07.2021 registered under Sections 22(b), 27(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') at Police Station City Malout, District Sri Muktsar Sahib.

As per the prosecution version, on 31.07.2021, the police party headed by ASI Satwant Singh in a private car while going for patrolling purposes apprehended the petitioner and his co-accused namely Lakhpreet Singh and Sukhwinder Singh. On search recovery of commercial quantity of contraband i.e. 12 vials of Omerex, 400 tablets Tramadol and 150 tablets of Carisoprodol was made from all the three accused persons. Drug money of an amount of Rs. 1,26,000/- was also recovered from the present petitioner.

I have heard learned Counsel for the parties and gone

through the case file.

Learned Counsel for the petitioner has argued that only 2 bottles of Omerex and 50 tablets of Carisoma and Rs. 1,26,000 were allegedly recovered from petitioner. Apart from the said recovery, nothing else was recovered from the petitioner. No independent witness was joined by the police party during the alleged recovery. The mandatory provisions of the NDPS Act were not complied with. The petitioner is not involved in any other case under the NDPS Act. Challan in the present case has already been filed. The petitioner is in custody since 31.07.2021. Trial is likely to take long time. No useful purpose will be served by keeping the petitioner in custody. Therefore, the petitioner may be ordered to be released on regular bail.

Learned Counsel for the petitioner has tried to make out case for grant of bail on the ground that the alleged recovery of contraband is to be taken individually and not jointly and the same falls under non-commercial quantity. In support of his arguments, he relies upon judgment passed by Hon'ble Supreme Court in case titled as **'Amarsing Ramjibhai Barot Vs. State of Gujarat' 2005(3) Apex Criminal 326.**

On the other hand, learned State Counsel has submitted that the petitioner is accused of having committed serious offences. In view of the nature of accusation and gravity of the offences, the petitioner does not deserve grant of regular bail. Therefore, the petition may be dismissed.

In compliance to the order dated 11.02.2022, reply by way of affidavit of Jaspal Singh Dhillon, PPS, Deputy Superintendent of

Police, Sub-Division Malout, District Sri Muktsar Sahib has been filed in the Registry which is taken on record.

In para No. 2 of the reply, detail of the recovery from all the three accused has been mentioned which is as under :-

Recovery detail in respect of accused Lakhpreet Singh

Salt	FSL report	Recovery	Total Qty.
Tramadol Hydrochloride	98.96 mg	200 tablets	19.792 grams
Chlorpheniramine Maleate	3.93mg/5ml	5 vials	19.65 mg.
Codeine Phosphate	9.86/5 ml	5 vials	49.30 mg.
Carisoprodol	349.01 mg	50 tablets	17.450 grams

Recovery detail in respect of accused Sukhwinder Singh

Salt	FSL report	Recovery	Total Qty.
Tramadol Hydrochloride	98.99 mg	200 tablets	19.798 grams
Chlorpheniramine Maleate	3.91mg/5ml	5 vials	19.55 mg.
Codeine Phosphate	9.87/5 ml	5 vials	49.35 mg.
Carisoprodol	348.87 mg	50 tablets	17.443 grams

Recovery detail in respect of accused Nirmala (petitioner)

Salt	FSL report	Recovery	Total Qty.
Chlorpheniramine Maleate	3.91mg/5ml	5 vials	19.55 mg.
Codeine Phosphate	9.88/5 ml	5 vials	49.4 mg.
Carisoprodol	349.05 mg	50 tablets	17.452 grams

In case **Amarsingh Ramjibhai Barot (Supra)** as relied upon by learned Counsel for the petitioner, Hon'ble Supreme Court has held that quantity of contraband carried by both the accused could not

be added to bring it within meaning of commercial quantity and Section 29 will not be attracted.

In the present case, the recovery effected from all the three accused if taken/carried out individually then the recovery can be concluded to be non commercial.

Having considered the facts and circumstances of the case and the above referred judicial precedent, recovery of the contraband from all the three accused taken individually is non commercial, the period of custody of the petitioner, challan in the present case already been presented, custodial interrogation of the petitioner not required for effecting any recovery and the fact that the trial is likely to take long time due but without expressing any opinion on the merits of case, the petition is allowed and the petitioner is ordered to be released on regular bail on furnishing of personal and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

However, nothing stated hereinabove would be construed as an expression of opinion on the merits of the case.

23.03.2022
kavneet singh

(SANT PARKASH)
JUDGE

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