

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

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**CRM-M-33096-2022
Decided on : 21.09.2022**

Manish @ Manish Kumar @ Tari

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. PKS Phoolka, Advocate
for the petitioner(s).

Mr. AS Sandhu, AAG, Punjab.

SANJAY VASHISTH, J. (Oral)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Manish @ Manish Kumar @ Tari, who has been booked for having committed the offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity ‘NDPS Act’), in FIR No. 0187, dated 15.12.2021, registered at Police Station City Budhlada, District Mansa, during the pendency of trial.

Learned State counsel has filed the custody certificate dated 20.09.2022 in Court today, which is taken on record, subject to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

On the very outset, learned counsel for the petitioner argues that story framed by the police itself is unbelievable on the face of it, because as per the contents of the FIR, petitioner is stated to have intoxicant tablets in a

transparent bag, which was held by him in his right hand. While addressing this argument, learned counsel for the petitioner submits that recovery of 1190 tablets of Alprazolam, is a concocted version as nothing has been recovered from the petitioner.

In support of his argument, learned counsel for the petitioner relies upon the order dated **02.08.2021**, passed by the coordinate Bench of this Court in **CRM-M-4408-2021 (O&M)**, titled as, “**Banti Kaur @ Bhanti Kaur Vs. State of Punjab**”. Para 5 of the said order is reproduced as under:-

“5. *It is not disputed that the contraband was alleged to have been carried by the petitioner in a transparent polythene bag. It is certainly highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly visible to others would surely invite attention of everybody who passes by. In these circumstances the case of the prosecution is rather rendered suspect particularly in view of the fact that the petitioner is not even stated to be a previous convict and is a lady who has been behind bars since the last about 9 months. In view of the aforesaid discussion particularly the fact that the petitioner is a lady and is not even a previous convict, the petition is accepted and the petitioner is ordered to be released on bail subject to her furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.*”

Learned counsel for the petitioner also relies upon the order dated **28.02.2020**, passed by the coordinate Bench of this Court in **CRM-M-8035-2019**, titled as, “**Mandir Singh Vs. State of Punjab**”, wherein, relevant contention of the petitioner recorded, is reproduced as under:-

“Learned counsel for the petitioner further submitted that the petitioner has no antecedent history of criminal activity, he is not involved in any other case. Presence of such contraband in a transparent bag would make the case debatable and ex facie unbelievable because in any case a person in the trade of contraband would not carry any such transparent bag so as to expose the contraband in public domain. Factum of the contraband being present in a transparent bag is not in dispute, nor it is found that the contraband was wrapped in some opaque wrapper, thereby making the same to be invisible even in a transparent bag.

*Learned counsel for the petitioner has placed reliance upon **Binder Kaur @ Goga Vs. State of Punjab in CRM-M-4584 of 2020 decided on 06.02.2020** on the aforesaid issue wherein it has been observed that the person in trade of such type of contraband would not do the trading in a transparent bag. In the instant case, since there is no such criminal history of the petitioner being involved in any narcotic trade, therefore, petitioner seeks concession of regular bail even against the rigour of Section 37 of NDPS Act.”*

He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

Per contra, learned State counsel while vehemently opposing the submissions of learned counsel for the petitioner, submits that recovery of the contraband in the present case is very high and Section 37 of the NDPS Act, would be a bar for considering the plea of grant of bail. He further submits that offence under the NDPS Act, is a serious offence, and to control this dangerous trend, petitioner should not be granted the concession of bail.

After considering the submissions of both the sides, perusing the record with their able assistance, and also after looking at the cited orders of bail passed by the two Coordinate Benches of this High Court, this Court is of the view that plea of grant of bail to the petitioner is worth considering, especially when after completion of investigation, challan has been submitted on 02nd April, 2022, and recording of statement of the prosecution witnesses is yet to start. Undoubtedly, Section 37 of the NDPS Act is a bar, while considering the plea of regular bail under Section 439 of Cr.PC, but there are other factors also available with the Court, which cannot be left without taking any notice, such as, argument raised by learned counsel for the petitioner, which is supported with the bail orders passed by the coordinate Benches of this Court. Petitioner is inside jail for the last about 09 months and 07 days and as per the custody certificate, there is no other case ever registered against the petitioner under the NDPS Act.

In view of the aforementioned facts and circumstances of the case and the submissions made by the parties, the prayer made in the present petition is allowed. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression on the merits of the case and the Trial Court shall decide the case on the basis of evidence available on record.

It is further made clear that if in future petitioner is found indulged in similar kind of activities, prosecution would be at liberty to seek cancellation of bail in the present case.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 21, 2022

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No