

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

CRM-M-39103-2021 (O&M)

Date of decision: 09.05.2022

Happy

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Dinesh Nagar, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This is the second petition that has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 25 dated 12.03.2019, registered under Sections 22 and 29 of the NDPS Act, 1985 at Police Station Rahon, District S.B.S. Nagar.

The first petition, bearing CRM-M-54949-2019, was dismissed as withdrawn on 26.07.2021.

Learned counsel for the petitioner submits that the new ground for filing the present petition is that the petitioner is in long custody of more than 03 years and out of total 12 prosecution witnesses, only 06 witnesses have been examined so far.

Learned counsel for the petitioner, at the very outset, relies upon order dated 05.11.2019 passed in CRM-M-30261-2019, vide which co-accused, Rajwant Kaur, who is the wife of the present petitioner and from whom recovery of 60 injections of *Buperonorphine* was effected, has already been granted the concession of regular bail by this Court. The operative part

of the order reads as under:

“Learned counsel for the petitioner submits that the petitioner, along with her husband Happy, were apprehended by the police with the allegations that she was the pillion rider on a motorcycle which was being driven by her husband Happy and recovery of 60 injections of *Buprenorphine* were effected.

Learned counsel for the petitioner further submits that the petitioner is not involved any other case and she has a minor child and since the petitioner and her husband are in judicial custody, there is no one at home to look after the child.

Learned counsel for the petitioner further submits that the petitioner is involved in this case on account of the fact that her husband Happy is involved in some other cases under the NDPS Act, whereas the petitioner is not involved in any other case under the NDPS Act.

Learned State counsel, on instructions from ASI Karamjit Singh and on the basis of the custody certificate dated 23.07.2019, has not disputed the factual position and submitted that petitioner is in judicial custody since 12.03.2019 and challan stands presented.

Learned State counsel has also not disputed the fact that husband of the petitioner is also in judicial custody and there is no one at home to look after the minor child.”

Learned counsel for the petitioner further submits that it will be a matter of trial whether a proper procedure has been followed or not as before conducting the search, no proceeding under Section 42 of the NDPS Act was conducted.

Learned State counsel has filed the custody certificate and has not disputed the factual position, however, it is submitted that the petitioner stands convicted in one case under the NDPS Act for one year and one more

case is pending against him under the NDPS Act. As per custody certificate, the petitioner is in judicial custody for the last 03 years, 01 month and 27 days.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last more than 03 years; conclusion of trial is likely to take some time as out of total 12 prosecution witnesses, only 06 witnesses have been examined so far and also in view of the fact that compliance of Section 42 of the NDPS Act is to be decided at the time of final adjudication by the trial Court, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

09.05.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No