

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

208

CRM-M-45505-2021

Date of Decision : **February 22, 2022**

JASPAL KAUR

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Through Video Conferencing

Present : Dr. Rau P.S.Girwar, Advocate
for the petitioner.

Mr. Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.29 dated 3.7.2021 under Sections 22, 61, 85 of NDPS Act, registered at Police Station Mehal Kalan, District Barnala.

As per the FIR (Annexure P-1), the Officer Incharge of the Police Station had stated that he alongwith another ASI and one Constable were patrolling in a private vehicle and checking suspicious persons on the link road village Pandori to village Kubta and when they reached at T-point Link Road Hardaspura in the limits of village Kubta. Then at about 9.30 a.m. an informer came to him and informed that one Jaspal Kaur (petitioner) has brought intoxicant tablets from the outer State and sells the same and today also she is selling the same walking on

link roads of village Hardaspura, Kutba and Lohgarh. The description of the petitioner was also stated by the informer and on the basis of information, the present FIR has been registered. Thereafter, as per the prosecution, the police party went to the disclosed place and saw the petitioner sitting on one side of the road and there was one plastic polythene bag lying in front of her and on enquiry she disclosed her name. Thereafter the police party tried to join public witness in the police party but no body was ready for the same. She was also carrying a ladies purse and, therefore, she had a legal right that her search may be conducted through any Gazetted Officer or a Magistrate but she replied that she has faith upon ASI and that he could conduct her search. Thereafter, the provision of Section 50 of the NDPS Act was complied with. During the search of the petitioner, 25 loose tablets were recovered from her hands and 1100 intoxicant tablets recovered from the aforesaid plastic bag which was lying in front of the petitioner. Thereafter the aforesaid tablets were sent to the FSL and it was found that the salt was of Tradamol Hydrochloride.

Dr. Rau, learned counsel for the petitioner has submitted that the petitioner is a lady aged 38 years and has been falsely implicated in the present case. He submitted that the petitioner is not involved in any other case and has clean antecedents and the reason for her false implication is that a few months ago there were Panchayat elections in the village and due to political rivalry, the present case has been planted upon the petitioner in connivance with the police. He submitted that from the aforesaid plastic bag Rs.32,350/- were also recovered alongwith 1100

tablets and as per the case of prosecution itself the plastic polythene bag was not with the petitioner but was lying in front or by the side of the petitioner and in order to implicate the petitioner, 25 loose tablets have been shown to be in her hands. He submitted that the petitioner is in custody from 3.7.2021 which is almost 7½ months and the investigation of the case has already been completed and challan was presented on 5.10.2021 and the charges were framed on 27.10.2021 and now the case is fixed for prosecution evidence. He further submitted that no independent witness was joined nor there is any evidence with the prosecution during investigation to show that the petitioner has procured the same from any other person or that she had been doing this in the past also. He submitted that in view of the peculiar facts and circumstances of the case, the bar contained under Section 37 of NDPS Act will not apply in the present case although the alleged recovery is commercial in nature.

On the other hand, the learned State counsel has submitted that in pursuance of the order passed by this Court, the State has filed an affidavit of DSP, Mehal Kalan, District Barnala and while referring to the affidavit filed by the State, he submitted that the petitioner was caught on the spot by the police party and the reason for not calling a Gazetted Officer or a Magistrate is that she had consented for the same and agreed to be searched from ASI and, therefore, the provision of Section 50 NDPS Act was complied with. He further submitted that it is correct that the petitioner is in custody from 3.7.2021 and now the case has been fixed for prosecution evidence. He submitted that the petitioner is not involved in any other case. On a query being put to the learned State

counsel by this Court that after the arrest of the petitioner, whether any evidence was available with the police to link the petitioner with any other person from whom allegedly she had got the tablets etc., the learned State counsel sought instructions from the IO and stated that she had named one person, namely, Mama but no person could be identified with that name and apart from this same there was nothing with the police to link the petitioner either on the basis of a phone call or otherwise.

I have heard the learned counsels for the parties.

The petitioner, who is a lady of the age of 38 years is in custody from 3.7.2021. The State has filed an affidavit in the present case regarding the role of the petitioner and her antecedents. The alleged recovery was of 25 loose tablets and 1100 intoxicant tablets which were sent to the FSL and the salt was found to be of Tradamol Hydrochloride and considering the weight of the tablets, the same falls under the commercial quantity. The learned counsel for the petitioner has submitted that a departure can be made from the bar contained under Section 37 of NDPS Act. Therefore, this Court would consider the following factors for considering as to whether a departure can be made in the present case from the bar contained under Section 37 of NDPS Act or not:-

- (i) The petitioner is a lady aged 38 years;
- (ii) The petitioner has clean antecedents and is not involved in any other case even as per para No.7 of the affidavit filed by the State;
- (iii) It is neither the case of the State counsel nor it is stated anywhere in the affidavit that in case the

petitioner is released on bail then she may repeat the offence or may influence any witness or may abscond from justice;

- (iv) The alleged recovery of 1100 tablets was not from the petitioner but from some bag which was lying in front of the petitioner as per the prosecution;
- (v) After the arrest of the petitioner, as per the learned State counsel, no sufficient material could be gathered as to from where the petitioner has got the intoxicant tablets, if any, apart from the fact that she had named one person as Mama and the same was not even traced by the police;
- (vi) The petitioner has raised a specific plea with regard to the political enmity in the village; and
- (vii) No independent witness was joined at the time of confiscation of alleged tablets.

Considering the aforesaid facts and circumstances of the present case where the investigating agency was not able to gather any sufficient material as per the information from the concerned IO with regard to the connectivity of the petitioner from any source and considering the aforesaid factors, this Court is of the view that it is a case where the twin conditions contained under Section 37 of the NDPS Act for making a departure from the bar contained under the aforesaid Section are satisfied. It appears to be more than prima facie case in favour of the petitioner and there are reasons to believe at this stage atleast that the petitioner is not guilty of the offence. So far as the second ingredient is concerned, it is neither the case of the State counsel or anything contained in the affidavit filed by the State that in case the petitioner is

released on bail then she may repeat the offence or may abscond from justice and may influence any witness or may tamper with any evidence. Therefore, this Court is of the considered view that at this stage, departure can be made from the bar contained under Section 37 of the NDPS Act.

Consequently, the present petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

February 22, 2022

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(JASGURPREET SINGH PURI)
JUDGE

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