

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-44743 of 2022
Date of Decision:17.11.2022

Veerpal Kaur

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kuldip Singh, Advocate,
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.85 dated 03.07.2022, under Section 22 of the NDPS Act (Section 29 of the NDPS Act added later), registered at Police Station Lakho Ke Behram, District Ferozepur.

It has been submitted by the learned counsel for the petitioner that the petitioner is a lady of the age of 32 years and she has been falsely implicated in the present case. He submitted that the petitioner is in custody for the last four months and she was nominated on the basis of the disclosure statement of a co-accused Gurbaksh Singh from whom an alleged recovery of 1720 tablets of Tramadol

Hydrochloride. He submitted that thereafter the police has wrongly implicated the petitioner in the present case on the basis of alleged disclosure statement and allegedly shown a recovery of 100 intoxicating tablets from the petitioner. Learned counsel submitted that the petitioner is not a habitual offender and is not involved in any other case and a disclosure statement of a co-accused is not admissible in evidence *per se*. He submitted that there is no other evidence available with the prosecution to connect the petitioner with the present offence and so far as the alleged recovery of 100 tablets from the petitioner is concerned, it was a false implication and it does not fall in the category of commercial quantity under the NDPS Act and therefore the bar contained under Section 37 of the NDPS Act will not be applicable to the present petitioner.

On the other hand, Mr. Kunal Vinayak, learned AAG, Punjab has stated that it is correct that the petitioner is in custody for the last four months and the investigation of the case has been completed but the challan is now ready for presentation. He stated that it is correct that the petitioner is not a habitual offender and is not involved in any other case. He has however submitted that although the name of the petitioner was nominated on the basis of disclosure statement of the co-accused but since there had been a recovery of 100 tablets from the petitioner, she is not entitled for the grant of regular bail.

I have heard the learned counsel for the parties.

It is a case where the petitioner is a lady of the age of 32 years and is in custody for the last four months and as stated by the learned counsel for the parties, she is not a habitual offender and is not involved in any other case. The name of the petitioner was surfaced on the basis of disclosure statement of a co-

accused. It is settled law that the disclosure statement of a co-accused is not admissible in evidence *per se* especially in view of the law laid down by the Hon'ble Supreme Court in Tofan Singh versus State of Tamil Nadu 2021 (1) RCR (Criminal) 1. So far as the alleged recovery of 100 tablets from the petitioner is concerned, the argument raised by the learned counsel for the petitioner that it was a case of false implication and it does not fall under the category of commercial quantity, does carry weight. Since the alleged recovery from the petitioner does not fall under the category of commercial quantity, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner. Furthermore, it is not the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail, then she may abscond from justice or influence any witness or tamper with any evidence.

In view of the aforesaid position, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

November 17, 2022

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