

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

CRM-M-50808-2022
Date of Decision: 30.11.2022

POOJA @ POOJA RANI

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Manoj R. Sharma, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARSH BUNGER, J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to petitioner namely, Pooja @ Pooja Rani, in case FIR No.175 dated 27.09.2022, under Sections 21(b), 21, 22, 27-A, 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after referred to as 'the NDPS Act') registered at Police Station Dinanagar, District Gurdaspur.

Learned counsel for the petitioner submitted that the petitioner is a lady and has been falsely implicated in the present case. It is submitted that the petitioner is in custody since 27.09.2022 for the alleged recovery of *12 grams of heroin* along with *Rs.59,000/-*, which is being termed as '*drugs money*'. It is submitted that the alleged recovery falls under the non-commercial quantity. It is further submitted that the provisions of Section 27-A of the NDPS Act has been wrongly invoked against the

petitioner by alleging that Rs. 59,000/- have been earned by illicit trafficking of drugs. It is submitted that the petitioner is not involved in any illicit trafficking of drugs and totally false and baseless allegations have been made against her so as to invoke Section 27-A of the NDPS Act. It is contended that mere recovery of an amount would not lead to inference that the same has been earned by illicit trafficking of drugs. It is submitted that one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics, so to attract the provisions of Section 27-A of the NDPS Act. It is further submitted that the learned Judge, Special Court, Gurdaspur has wrongly dismissed the bail application of the petitioner on the ground that the offence under Section 27-A of the NDPS Act is a serious offence and attracts bar created under Section 37 of the NDPA Act. It is submitted that nothing is to be recovered from the petitioner and no useful purpose would be served by keeping her in custody any further. It is submitted that the petitioner is ready to abide by all conditions as imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail has been made.

On advance service of copy of the petition, Mr. Subhash Godara, Additional Advocate General, Punjab, appears on behalf of State of Punjab and files the custody certificate of the petitioner, which is taken on record, subject to all just exceptions.

Learned State counsel opposes the bail plea of the petitioner on the ground that he was apprehended with *12 grams of heroin* and Rs.59,000/-, in cash. It is submitted that the FIR in question has been registered under Sections 21(b), 21, 22, 27-A and 29 of the NDPS Act, which is a serious offence and the rigors of Section 37 of the NDPS Act are

attracted to this case. While referring to order dated 24.10.2022 passed by the Judge, Special Court, Gurdaspur, learned State counsel has submitted that the offence under Section 27-A of the NDPS Act relates to financing of the illicit trafficking of drugs, accordingly, the petitioner is not entitled to the concession of regular bail. It is contended that if the petitioner is released on regular bail, then there is every likelihood that she may abscond and influence the witnesses. It is stated that the petitioner does not have clear antecedents as she was earlier involved in two criminal cases i.e. FIR No.83 dated 12.05.2021 registered under Sections 452, 323, 324, 148, 149 IPC at Police Station Dinanagar and FIR No.103 dated 21.07.2019 registered under Sections 324, 148, 149 IPC at Police Station Dinanagar.

Replying to the submission of the learned State counsel regarding two other criminal cases, learned counsel for the petitioner has submitted that the said two cases are not under the NDPS Act. It is submitted that FIR No.83 dated 12.05.2021 is registered under Sections 452, 323, 324, 148, 149 IPC at Police Station Dinanagar and FIR No.103 dated 21.07.2019 is registered under Sections 324, 148, 149 IPC at Police Station Dinanagar. He further submitted that in the said two cases, the petitioner is already on bail and he has handed over the copies of bail orders dated 15.07.2021 and 20.08.2019 in the Court today, which are taken on record and marked as Mark 'A' and Mark 'B', respectively.

I have heard learned counsel for the parties and have perused the paper book and also the custody certificate handed over by the learned State counsel, in Court today.

The petitioner is a lady and is in custody for the last about two months for the alleged recovery of *12 grams of heroin*, which is a

non-commercial quantity. Further, an amount of Rs.59,000/- in cash was allegedly recovered from the petitioner, which as per the prosecution, is stated to be earned by her on account of illicit trafficking of drugs. So far as the alleged recovery of *12 grams of heroin* is concerned, the same is intermediate quantity. Hon'ble the Apex Court in ***Sami Ullaha vs Superintendent, Narcotic Central Bureau 2009(1) RCR (Crl.) 40***, has observed that where intermediate quantity of narcotic is involved, it may not be justified to apply the rigors of the provisions of Section 37 of the NDPS Act, relating to grant of bail. It was further observed therein that a person's liberty is protected in terms of Article 21 of the Constitution of India and when two views are possible, the view which leans in favour of the accused must be favoured.

In the instant case, the learned Judge, Special Court, Gurdaspur has declined the relief of bail to the petitioner on the ground that the offence under Section 27-A of the NDPS Act is grave inasmuch as it relates to financing of the illicit trafficking of drugs; however, in my considered view, mere recovery of cash from the petitioner would not lead to an inference that she is involved in financing of illicit trafficking of drugs, especially when there is no other case against her under the NDPS Act, as would be borne out from the custody certificate. Further, a solitary transaction concerning contraband item will not amount to financing illicit traffic in narcotic. In ***Rakesh Singh @ Rakesh Kumar Singh vs The State of West Bengal 2021(1) Cal.L.T. 308***, a Division Bench of Calcutta High Court, while considering a bail petition involving Section 27-A of the NDPS Act, has

observed as under :-

*“8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, prima facie we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word “trafficking” connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our prima facie opinion, not fall within the mischief of Section 27A of the NDPS Act. In this connection, one may refer to a decision of the Bombay High Court rendered on **October 7, 2020 in Criminal Bail Application (Stamp) No.2386 of 2020 (Reha Chakraborty v. The Union of India State of Maharashtra).***

9. Fifthly, we also notice that none of the 53 criminal cases pending against the petitioner is under the provisions of the NDPS Act. Though, the petitioner has criminal antecedents, there is no history of the petitioner dealing in narcotics in contravention of the provisions of the NDPS Act.”

In the above referred case, the Calcutta High Court vide its order dated 24.11.2021 allowed the bail application and the said order granting bail was further challenged by the State of West Bengal before the Hon’ble Apex Court, however, the order granting bail by the Calcutta High Court was maintained. Hon’ble the Apex Court in ***State of West Bengal vs Rakesh Singh @ Rakesh Kumar Singh’s 2022(10) Scale 483***, while declining to interfere in the bail order granted by the Calcutta High Court,

especially in relation to Section 27-A of the NDPS Act, observed as under :-

“ 16.4. Hence, suffice it to observe for the present purpose that in the given set of facts and circumstances, the High Court has rightly found that applicability of Section 27A NDPS Act is seriously questionable in this case. That being the position; and there being otherwise no recovery from the respondent and the quantity in question being also intermediate quantity, the rigors of Section 37 NDPS Act do not apply to the present case.”

Drawing support from the observations made by the Hon'ble Apex Court in ***Rakesh Singh @ Rakesh Kumar Singh's case (supra)*** and upon consideration of the facts and circumstances of the instant case, I am of the considered view that the case of the present petitioner is on a slightly better footing inasmuch as that there were 53 other criminal cases against above referred Rakesh Singh, although there was no case under the NDPS Act, whereas, in the case in hand, there are only two other criminal cases against the present petitioner other than the present case FIR No.175 dated 27.09.2022. As per custody certificate, there is no other case under the NDPS Act against the petitioner nor any such plea has been raised by the State counsel during the course of hearing of the present petition. Even on specific asking of the Court, no such instance/circumstance has been pointed out by the State counsel, which has come up during investigation carried out so far, so as to indicate any degree of continuity and regularity in drug dealing so as to enable this Court to *prima facie* form an opinion that the petitioner is trafficking in drugs; so as to attract the provisions of Section 27-A of the NDPS Act and in turn, also attract the bar under Section 37 of the Act.

Prima facie, at this stage, there is nothing to show that the petitioner has previously violated any of the provisions of NDPS Act. The other two criminal cases are relating to the offences under the Indian Penal code, wherein the petitioner is on bail. Thus, at this stage, the applicability of Section 27-A of the NDPS Act, in the present case is a questionable and a debatable issue.

Even otherwise, while dealing with Section 37 of the Act, the Court is not called upon to record a finding of “not guilty” and it is only required to say that there are reasonable grounds to believe that the accused is not guilty of the offence. In the facts of the present case, on an assessment of material on record, I am of the *prima facie* view at this stage that the petitioner may not have committed the offence under Section 27-A of the NDPS Act. Further, considering the fact that the petitioner is not involved in any other case under the NDPS Act, there is nothing on record to suggest that she is likely to commit an offence under the NDPS Act, while on bail.

So far as the apprehension shown by learned State counsel that the witnesses could be influenced, suffice it to state that all the witnesses in this case are official witnesses i.e. the police officials regarding the alleged possession and recovery of the contraband from the petitioner. Accordingly, the apprehension of the State counsel that the petitioner might influence the witnesses, is misplaced.

Keeping in view the afore-mentioned circumstances, the instant petition is allowed and the petitioner is ordered to be released on regular bail subject to her furnishing heavy bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate concerned. However, before release, the concerned Station House Officer be informed and the petitioner shall inform

the concerned Station House Officer about her address at which she intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would also furnish her telephone number to the concerned Station House Officer. She would also furnish an undertaking to the effect that she will not indulge in any illegal activity in relation to drugs and intoxicants.

Nothing expressed here-in-above shall be construed to be an observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

The petition is accordingly disposed of.

November 30, 2022
gurpreet

(HARSH BUNGER)
JUDGE

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