

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1938-2023 (O&M)
Date of Decision: 28.08.2023

Vidya Devi

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 54 dated 24.06.2022, under Sections 22 and 29 of NDPS Act, registered at Police Station City Ahmedgarh, District Malerkotla (earlier District Sangrur).

2. Learned counsel for the petitioner has submitted that the petitioner is a lady of the age of 72 years and she has already faced incarceration for 1 year and 29 days. He submitted that as per the FIR, the police party had seen the petitioner coming from opposite direction carrying a transparent bag consisting of some tablets and looking at the police party, she had thrown away the bag which allegedly consisting of 1000 tablets of

Diphenoxylate Hydrochloride. He submitted that the petitioner has been falsely implicated in the present case in view of the fact that she was earlier involved in 8 more cases under the NDPS Act out of which in one case she has been convicted. He further submitted that the charges in the present case were framed on 13.01.2023 and more than seven months have elapsed but no prosecution witness has been examined and it was because the petitioner has been falsely implicated and that is the reason as to why the police officers who are the prosecution witnesses have not cared to depose before the trial Court with a result that the petitioner who is a lady of the age of 72 years has faced incarceration for 1 year and 29 days. He submitted that the mere pendency of other cases against the petitioner cannot become a ground for denial of bail to the petitioner considering the facts and circumstances of the present case.

3. On the other hand, Mr. Sarabjit Singh Cheema, DAG, Punjab has submitted that it is correct that the petitioner is in custody for 1 year and 29 days and the charges were framed on 13.01.2023 but till date no prosecution witness has been examined. He has however opposed the grant of regular bail to the petitioner on the ground that the petitioner is a habitual offender and is involved in 8 more cases under the NDPS Act out of which in one case she has already been convicted.

4. I have heard the learned counsel for the parties.

5. The petitioner is stated to be a lady of the age of 72 years, although she is stated to be involved in some more cases under the NDPS Act and even in one case she has been convicted but for the purpose of considering the bail petition of the petitioner in the present case, the facts

and circumstances of the present case also have to be seen. As per the allegations, the police had apprehended the petitioner who had allegedly thrown away the bag on the ground after looking at the police party. The charges in the present case were framed on 13.01.2023 but there is no justification coming forth from the State counsel as to why there was a delay of seven months for not producing any prosecution witness especially in view of the fact that the present case pertains to the NDPS Act where normally the police officials are the prosecution witnesses unless some private witnesses are to be examined. In view of the aforesaid position although the alleged recovery from the petitioner was 1000 tablets of Diphenoxylate Hydrochloride which falls in the category of commercial quantity but the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in the light of Article 21 of the Constitution of India in view of the peculiar facts and circumstances of the present case wherein the petitioner is a lady of the age of 72 years and more than seven months have elapsed after the framing of the charges but no prosecution witness has been examined. Reference in this regard has been made to the judgments of the Hon'ble Supreme Court in *Satender Kumar Antil Versus Central Bureau of Investigation and another* [2022 (10) SCC 51], *Mohd. Muslim @ Hussain Versus State (NCT of Delhi)* [2023 AIR (SC) 1648], *Dheeraj Kumar Shukla v. The State of Uttar Pradesh (Special Leave to Appeal (Crl.) No.(s) 6690 of 2022)* and also a recent judgment of Supreme Court in *Rabi Prakash Versus State of Odisha, Special Leave to Appeal (Crl.) No.4169 of 2023*.

6. In view of the peculiar facts and circumstances of the present

case and considering the custody of the petitioner which is to be 1 year and 29 days and the age of the petitioner who is a lady of the age of 72 years, this Court deems it fit and proper to grant regular bail to the petitioner.

7. Consequently, 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, if not required in any other case.

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

28.08.2023

rakesh

Whether speaking

Whether reportable

(JASGURPREET SINGH PURI)

JUDGE

: Yes/No

: Yes/No