

209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3435-2023 (O&M)
Date of decision: 19.09.2023

ASHA DEVI

...Petitioner

VERSUS

UNION OF INDIA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Diwan S. Adlakha, Advocate
for the petitioner.

Ms. Gurmeet Kaur Gill, Senior Panel Counsel
for the respondent-Union of India.

JASGURPREET SINGH PURI, J. (Oral)

1. 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 case No.NCB Crime No.04/2022 dated 11.01.2022, under Sections 8, 20, 29 and 60 of the NDPS Act, registered at Police Station Narcotic Control Bureau, Chandigarh (NCB).

2. Learned counsel for the petitioner submitted that the petitioner is a lady of the age of 47 years and she has been falsely implicated in the present case. He further submitted that as per the allegations, on the basis of secret information, the police had intercepted a car which was being driven by the son of the petitioner, who is a co-accused in the present case and on the search of the said car, there was an alleged recovery of 1.870 kgs. of *charas* which was

concealed inside the panels of the doors of the car. He further submitted that so far as the present petitioner is concerned, she is the mother of the aforesaid co-accused and was only sitting in the car and was not even aware of anything concealed in the car. He further submitted that there was no recovery from the conscious possession of the petitioner. He further submitted that the petitioner has already faced incarceration for about 1 year and 6 months and there are severe complications in the eyes of the petitioner and she has developed acute infection in her eyes which has resulted in blurring her vision. Therefore, the petitioner had made a request for grant of interim bail and this Court vide order dated 04.07.2023 granted interim bail to the petitioner for a period of two months on the ground that the petitioner was to be operated upon by the Department of Ophthalmology due to severe complications and thereafter interim bail was extended till today and she is taking regular treatment from the PGI, Chandigarh. Although surgery was not performed but as an alternative, certain injections were given to the petitioner in the eyes and she has developed severe infection in the eyes and there is every possibility that in case the treatment is not continued at PGI, Chandigarh then there is possibility that she may lose her eye sight permanently. He further submitted that till date only 2 prosecution witnesses out of 13 have been examined and those two witnesses are not even material witnesses and the delay in the trial has been caused due to the prosecution and in view of the aforesaid facts and circumstances of the present case, the petitioner may be considered for grant of regular bail. He further submitted that the petitioner was already on interim bail till today and

the petitioner is also present in the Court today and he identifies the petitioner and therefore may be treated to be in deemed custody.

3. On the other hand, Ms. Gurmeet Kaur Gill, Senior Panel Counsel for the respondent-Union of India submitted that it is correct that the petitioner has faced incarceration for about 1 year and 6 months and only two prosecution witnesses have been examined till date. She further submitted that the petitioner was involved in one more case under the NDPS Act although she was acquitted in that case. She has however opposed the grant of regular bail to the petitioner on the ground that the amount of *charas* recovered from the car was 1.870 kgs., which falls in the category of commercial quantity and therefore in view of the aforesaid bar, the petitioner is not entitled for the grant of regular bail.

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

5. The petitioner is a lady of the age of 47 years, who is present in the Court and she is duly identified by the learned counsel for the petitioner. She is already on interim bail till today and therefore she is deemed to be in custody. The allegations in the present case were that on the basis of secret information, a car was intercepted which was being driven by the son of the petitioner, who is a co-accused in the present case and the petitioner was sitting in the car and there was an alleged recovery of 1.870 kgs. of *charas* inside the panels of the doors of the car in a concealed position and therefore the argument as raised by the learned counsel for the petitioner that there was no recovery from the conscious possession of the petitioner carries weight. Even otherwise also, the petitioner is stated to be medically unfit because of her severe eye infection. The medical condition of the petitioner as so acknowledged by the learned

counsel for the respondent that she is suffering from acute medical eye problem itself would become a ground for considering the grant of bail of the petitioner. The petitioner is stated to be not involved in any other case except in one case under the NDPS Act, in which she already stands acquitted even as per the learned State counsel.

6. In view of the aforesaid facts and circumstances of the present case and considering the custody of the petitioner and her medical condition, this Court is of the view that 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.

7. Therefore, considering the aforesaid totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

8. Consequently, the present petition is allowed. The interim bail granted to the petitioner vide order dated 04.07.2023, is hereby made absolute.

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

19.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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