

CRM-M-5232-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5232-2023 (O & M)

Date of decision: 29.05.2023

Surjeet Kaur

..... Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Karandeep Singh Sidhu,, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail to the petitioner in case FIR No.124 dated 07.07.2022 under Section 22/61/85 of the NDPS Act (Section 29/61/85 NDPS Act added later on) registered at Police Station Vairo Ke, Distt. Fazilka.

2. The brief fact of the case are that on 07.07.2022, when the police party headed by ASI Hardev Singh was present in the area of Canal Bridge, Ratta Khera, a person came there riding on a motorcycle from the side of village Chak Khadunj @ Kaniya. He was signalled to stop. On seeing the policy party, he became perplexed and tried to turn back. He was apprehended on suspicion and disclosed his name as Balwant Singh @

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Premi son of Dasondha Singh. Strips of intoxicant tablets were clearly visible in the side pocket of shirt of Balwant Singh @ Premi. Initially, FIR No.124 dated 07.07.2022 under Sections 22 & 29 of the NDPS Act at Police Station Vairo Ke, District Fazilka, came to be registered against Balwant Singh @ Premi. Meanwhile, senior police officials were called to the spot and the search of Balwant Singh @ Premi was conducted as per the provisions of the NDPS Act. He was found to be in possession of 09 strips of intoxicant tablets containing 10 tablets each totalling 90 intoxicant tablets of Tramadol Hydrochloride tablets 100 mgs.

Balwant Singh suffered his disclosure statement whereby he disclosed that he alongwith Surjeet Kaur (petitioner) were indulging in the business of selling the intoxicant tablets. On the basis of the said statement, Surjeet Kaur was also nominated as an accused in the present case. Thereafter, the police raided the house of Surjeet Kaur (petitioner) and she was interrogated. Based on the disclosure statements of Balwant Singh @ Premi and Surjeet Kaur (petitioner), they got recovered 1000 tablets of Tramadol 100 mg. Which were taken into police possession. Thereafter, both the accused were arrested as per law and vide *rapat* 039 dated 07.07.2022, the offence under Section 29 of the NDPS Act was also added.

During the course of custodial interrogation, both the accused disclosed that they had purchased the said intoxicant tablets from Gurjeet Singh @ Mona, who was nominated as an accused vide DDR No. 15 dated 10.07.2022.

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3. The learned counsel for the petitioner contends that Balwant Singh @ Premi was an employee of the petitioner and had been residing in the back portion of the house of the petitioner in the area which was being used for storage of fodder. The recovery had been effected from the said area purportedly on the disclosure statement of both the accused though the disclosure statement of Balwant Singh @ Premi (Annexure P-7) alone seems to have been recorded qua himself and the petitioner. The petitioner could not be said to be in conscious possession of the contraband as the recovery was from an area in the exclusive possession of Balwant Singh @ Premi. He, therefore, contends that the petitioner was entitled to the grant of bail, moreso, as she was a lady, in custody since 07.07.2022 and none of the 14 prosecution witnesses had been examined so far.

4. The learned counsel for the State, on the other hand, contends that at the instance of the petitioner and the co-accused arrested at the spot, the recovery of 1000 Tramadol Hydrochloride tablets 100 mg. was effected, and therefore, she was not entitled to the concession of bail. He, however, admits that as per the site plan, the place of recovery is the fodder room situated at the back of the house of Surjeet Kaur (petitioner).

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

6. Admittedly, the petitioner is a lady, a first time offender and is in custody since 07.07.2022. Whether the petitioner could be said to be in the conscious possession of the contraband said to have been recovered at the instance of her co-accused and her, would be a matter of adjudication

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required and a *prima facie* satisfaction under Section 37 of the NDPS Act can be recorded.

7. Thus, without commenting upon the merits of the case, the present petition is allowed and the petitioner, namely, Surjeet Kaur, is ordered to be released on bail to the satisfaction of the Trial Court/Duty Magistrate concerned.

8. The petitioner shall appear on the first Monday of every month before the local police station till the conclusion of the trial and furnish an affidavit each time that she is not involved in any case/crime other than the present one.

9. In addition, the petitioner (or through someone on her behalf) shall prepare an FDR in the sum of Rs.1,00,000/- and deposit the same with the Trial Court. The same would be liable to be forfeited as per law in case of the absence of the petitioner from Trial without sufficient cause.

May 29, 2023
sukhpreet

(JASJIT SINGH BEDI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No