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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6637-2023 (O&M)
Date of Decision: 28.04.2023

Ranjit Kaur

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. J.K. Singla, Advocate, for the petitioner.

Mr. Arun William, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No. 65 dated 28.02.2021, under Sections 22, 29 of NDPS Act, registered at Police Station Sadar Mansa, District Mansa.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 28.02.2021 which is about 2 years and 2 months and 10 witnesses have already been examined. He submitted that as per the allegations contained in the FIR, the police party got an information that one lady was holding a cloth bag in her left hand and was carrying some intoxicant material and on seeing the police, she had thrown away the bag in a khal i.e. water outlet and some strips were scattered in the khal and some were left in the bag. He submitted that in fact the petitioner is a lady of the age of 44

years has been falsely implicated in the present case because earlier she was convicted in one case under Section 302 IPC and there was a personal enmity with the other party due to which the petitioner has been falsely implicated. He submitted that even as per the prosecution story, there was no recovery from the conscious possession of the petitioner and even as per the prosecution, the bag was thrown in a khal and the tablets were scattered. He further submitted that allegedly there was a recovery of 800 tablets of Tramadol which is marginally higher than the commercial quantity under the NDPS Act. He submitted that considering the total custody of the petitioner which is now more than 2 years and the petitioner being a lady, she may be considered for the grant of regular bail.

3. On the other hand, Mr. Arun William, learned AAG, Punjab has submitted that it is correct that the petitioner who is a lady is in custody from 28.02.2021 which is about 2 years and 2 months and she was earlier involved in one case under Section 302 IPC in which she was convicted but there is no other case under the NDPS Act against the petitioner. He has however opposed the grant of bail to the petitioner on the ground that there has been a recovery of 800 tablets of Tramadol which falls in the commercial quantity under the NDPS Act and therefore the prayer of the petitioner is hit by the bar contained under Section Section 37 of the NDPS Act.

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

5. The petitioner is a lady of the age of 44 years and has faced incarceration for 2 years and 2 months. The allegation is pertaining to 800 tablets of Tramadol which is marginally higher than the commercial quantity under the NDPS Act. Ten witnesses have already been examined as per the learned counsel for the parties. There is no other case against the petitioner

under the NDPS Act. As per the learned counsel for the parties, the recovery was not from the conscious possession of the petitioner but thereafter the tablets were scattered in the khal. Learned counsel for the petitioner has sought bail on the ground of long custody in view of a latest judgment of the Hon'ble Supreme Court in ***Mohd. Muslim @ Hussain Versus State (NCT of Delhi) [Criminal Appeal No.943 of 2023]***. The relevant portion of the aforesaid judgment contained in para No.19 and 20 are produced as under:-

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil supra). Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.

6. After considering the arguments raised by the learned counsel for the parties, this Court is of the view that the petitioner who is a lady and has also faced incarceration for 2 years and 2 months and is not involved in any other case under the NDPS Act will be entitled for the grant of regular bail in view of the long custody of the petitioner and therefore on the basis of the aforesaid custody the bar contained under Section 37 of the NDPS Act will not apply in the light of the judgment of the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain (Supra)* and also in the light of Article 21 of the Constitution of India.

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.

28.04.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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