

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-7359-2023(O&M)
Date of decision: 21.04.2023

JASWINDER KAUR

....Petitioner

Versus

STSTATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R. P. Dhir, Advocate
for the petitioner.

Mr. H. S. Sullar, Sr. DAG, Punjab.

AMAN CHAUDHARY. J.

CRM-11433-2023

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexures P-4 to P-6 are taken on record.

CRM-M-7359-2023

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No. 137 dated 08.07.2022, under Sections 21, 29, 61 and 85 of NDPS Act, 1985 registered at Police Station Tibba, District Ludhiana.

Learned counsel contends that the petitioner has been in custody for the last more than 09 months having been arrested on 08.07.2022. The quantity of contraband being 250 gms. of Heroin, has been recovered from her pocket, is non commercial in nature as per the schedule in the NDPS Act. The petitioner was

found to be walking alongwith co-accused and not in a vehicle, and alleged recovery has been effected from them vide separate memos, hence cannot be termed to be a joint recovery. Co-accused has already been granted regular bail vide order 03.02.2023. Challan has been presented on 17.10.2022 but charges have not been framed and in all, there are 15 prosecution witnesses. She is involved in one more case under NDPS Act which is also of non commercial quantity and is on bail in the said case. In this regard he relies on the judgment passed by Hon'ble The Supreme Court titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

Learned State counsel opposes the bail on the ground that the petitioner was walking with two other co-accused for the delivery of the contraband at a particular place when they were apprehended and 250 gms. of heroin from the pockets of each of them was recovered, which was taken into possession vide separate recovery memos. However, he is unable to controvert the other submissions made by learned counsel for the petitioner in particular with regard to the fact of recovery effected from him being non commercial, custody, stage of the trial and that co-accused has already been granted regular bail.

Heard.

Hon'ble The Supreme Court of India in the case of **Maulana Mohd. Amir Rashadi** (*Supra*) has held that, “As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

In view of the facts and circumstances of the case, the observations

made in aforesaid judgment, and that the petitioner has been in custody for the last 9 months and 12 days; recovery effected from her is non-commercial, therefore, rigors of Section 37 of NDPS Act are not attracted; co-accused has already been granted regular bail; challan has been presented, however, charges are yet to be framed and in all, there are 15 prosecution witnesses; the trial is likely to take sufficiently long time; her further detention behind bars would not serve any useful purpose, thus the present petition for grant of regular bail deserves to be allowed.

As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to her furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to her not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
2. The petitioner will not pressurize/ intimidate the prosecution witnesses.
3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
4. The petitioner shall not commit an offence similar to the offence of which, she is an accused, or for commission of which she is suspected of.
5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
6. The petitioner shall not in any manner misuse her liberty.
7. The petitioner shall furnish her address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks

to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.

8. The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, she does not have the passport, she shall furnish a specific affidavit in this regard.

It is made clear that in case of any infraction of any of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

In view of the above, this Court makes it clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

21.04.2023

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