

2023:PHHC:064885

**212 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10632-2023

Date of Decision: 05.05.2023

SAROJ RANI

... PETITIONER

VS.

STATE OF PUNJAB

.. RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

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

Ms. Ruchika Sabherwal, DAG, Punjab.

VIVEK PURI, J.(ORAL)

1. The petitioner is seeking regular bail in the case bearing FIR No. 124 dated 20.09.2019 under Sections 21/22/61/85 of the NDPS Act registered at Police Station Sadar Jalalabad, District Fazilka.

2. Short reply by way of affidavit of Atul Soni, Deputy Superintendent of Police, Sub Division, Jalalabad and custody certificate have been placed on record.

3. Briefly, the FIR has been registered in pursuance of recovery of 500 tablets of Tramadol hydrochloride and 05 grams of heroin from the possession of the petitioner on 20.09.2019.

4. Learned counsel for the petitioner contends the petitioner is in custody for a period of 03 years, 07 months and 15 days and not involved in any other case under the NDPS Act. Though, the petitioner is arraigned as an accused in another case bearing FIR No. 241 dated 01.12.2020 under Sections 384/389/506/420/120-B IPC registered at Police Station City Fazilka, but the said case has been registered against her while she was in custody in the instant case. It has been further submitted that despite

specific directions issued by the Court at the earlier instance, the prosecution evidence has not been concluded and the trial of the case is getting delayed. Learned counsel for the petitioner has relied upon the decision rendered in SLP Criminal No.6690-2022, wherein, the bail was granted to an accused having no criminal antecedents after he remained in custody for 2½ years and it was observed that conditions of Section 37 of the NDPS Act can be dispensed with particularly when the trial is yet to commence though the charges have been framed.

5. Learned State counsel has opposed the bail application on the score that two earlier bail applications of the petitioner have been dismissed by speaking orders and furthermore, out of 13, 04 witnesses have been examined and 04 have been given up.

6. It is no doubt true that two earlier applications for regular bail have been dismissed by speaking orders as back as on 14.07.2020 and 15.10.2020 but thereafter, significant time period has elapsed which provides sufficient change of circumstances for the indulgence by this Court to consider the matter with regard to the bail to the petitioner afresh. It shall not be out of place to mention here that on 23.09.2022, the petition bearing CRM-M-13097-2022 for regular bail filed by the petitioner was dismissed as withdrawn and the learned trial Court was requested to look into the feasibility of expeditious disposal of the case keeping in view the fact that the petitioner is in custody for a period of more than three years. Copy of the order dated 05.03.2020 passed by the learned trial Court indicates that the charge was framed on that day. The status report indicates that on 15 dates of hearing, the case was adjourned but no witness was examined on those dates and the case was listed for 05 dates even after the passing of the

order dated 23.09.2022. The trial Court can look into the feasibility of expeditious disposal of the case only by getting effective assistance rendered by the prosecution and production of the witnesses in the Court. Short reply placed on record does not indicate that the witnesses were present in the Court on subsequent occasion and could not be examined for any reason which may not be attributable to the prosecution. The petitioner is in custody for a period of 03 years, 07 months and 15 days and not involved in any other case under the NDPS Act. The petitioner cannot be kept in incarceration for a long period of time particularly when trial of the case is not progressing. The speedy trial is a constitutional right provided to an accused under Article 21 of the Constitution of India.

7. In these set of circumstances, sufficient mitigating circumstances are made out to extend the concession of bail to the petitioner. Therefore, without making any comment on the merits of the case, the ends of justice will meet, if the petitioner is granted concession of regular bail. It is ordered that the petitioner be released on bail subject to her furnishing bail/surety bonds to the satisfaction of concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.

05.05.2023
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No