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

CRM-M-16104-2023

Date of Decision: 24th July, 2023

Gurmeet Kaur @ Gurmeeto

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. A.P.S. Rehan, Advocate
for the petitioner.

Mr. Harjinder S. Sidhu, AAG, Punjab.

HARSH BUNGER, J.

Petitioner (Gurmeet Kaur @ Gurmeeto) has filed the instant petition under Section 439 of the Code of Criminal Procedure seeking grant of regular bail in case FIR No.96, dated 18.05.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Haryana, District Hoshiarpur.

2. Status report by way of affidavit of Surinderpal Singh, PPS, Deputy Superintendent of Police and Sub-Division Hoshiarpur, District Hoshiarpur has been filed on behalf of respondent/State of Punjab, which is already on record.

3. Custody certificate dated 28.05.2023 of the petitioner has been filed by learned State counsel in the Court, which was taken on record vide order dated 30.05.2023.

4. Briefly, the case of the prosecution is that, on 18.05.2021, ASI

Lakhibir Singh along with other police officials were going on private vehicle in connection with checking of vehicles and bad elements and when the police party reached just ahead of Adda Bhikhowal, one lady was seen coming on foot, who on seeing the police party tried to turn back and then she threw a heavy polythene envelope on the side of the road, but was apprehended by the police party on the basis of suspicion. Upon inquiring, about her details, she disclosed her name as Gurmeet Kaur @ Gurmeeto (petitioner). After complying with the provisions of law and upon checking of the polythene envelope allegedly thrown by the petitioner, intoxicant powder was recovered, which upon weighing came to be 103 grams. Accordingly, the present FIR was registered and the petitioner was arrested.

5. As per the status report, the alleged recovered substance was sent for examination and Forensic Science Laboratory Report (Annexure R-1) has been received in this case and salt Alprazolam was found in the alleged recovered substance.

6. It appears that the petitioner was earlier released on interim bail by the Court of learned Special Judge, Hoshiarpur vide order dated 16.06.2021 subject to the condition that she would surrender before the Court within a period of one week of receipt of the Forensic Science Laboratory Report for further proceedings. It further appears that the challan in the instant was filed on 06.01.2023 and accordingly, the petitioner was taken in judicial custody on 06.01.2023 itself.

7. The petitioner approached the Court of learned Additional Sessions Judge, Hoshiarpur, seeking regular bail; however, the same was rejected vide order dated 14.03.2023 (Annexure P-4). Accordingly, the present petition has been filed by the petitioner before this Court under Section 439 Cr.P.C. seeking regular bail.

8. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is submitted that the petitioner is an old lady of around 64 years of age, having many age related health complications. It is submitted that the petitioner has been in custody for almost 6 months (as on 28.05.2023). Learned counsel for the petitioner submits that as per the Forensic Science Laboratory Report, the recovered substance weighs 103 grams (along with weight of polythene) and the said recovered substance is stated to be containing the salt Alprazolam and as per Serial No.178 of the notification dated 19.10.2001, the small quantity of Alprazolam is 5 grams whereas commercial quantity is 100 grams. It is submitted that if the weight of the polythene bag is deducted, then the quantity of the alleged recovered intoxicating powder (Alprazolam) would be less than 100 grams. Learned counsel submits that the investigation in this case is complete; challan has been presented on 06.01.2023; charges have been framed on 04.02.2023 and thus, the trial is likely to take long time and no useful purpose would be served by keeping the petitioner behind the bars. Learned counsel further submits that the petitioner herein is ready to abide by all the conditions as may be imposed by this Court or by the trial Court, accordingly prayer for grant of regular bail is made.

9. Per contra, learned State counsel opposes the plea of petitioner for grant of regular bail on the ground of seriousness and gravity of the offence. It is submitted that the petitioner does not have clean antecedents as she is involved in one more case bearing FIR No.53 dated 16.04.2021 under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Model Town, Hoshiarpur. Learned State counsel submits that since the allegations levelled against the petitioner are serious in nature, accordingly there is strong apprehension that if the petitioner is

released on bail then she may tamper evidence by threatening or influencing the prosecution witnesses or may abscond and flee from justice which may delay the trial; accordingly, prayer for dismissal of the petition has been made.

10. Learned counsel for the petitioner, in rebuttal, has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi v. State of U.P. and another, 2012(2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in one other case. The relevant portion of the said judgment is reproduced herein below :-

“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.”

11. I have heard learned counsel for the parties and perused the paper book, status report as well as the custody certificate of the petitioner filed by learned State counsel.

12. In this case, the petitioner is an old lady of around 64 years of age and she is in custody for almost 6 months (as on 28.05.2023). The allegedly recovered intoxicating powder (Alprazolam) is stated to weighing 103 grams with the weight of the polythene bag. As per the definition of the “commercial quantity” as mentioned in the Narcotic Drugs and Psychotropic Substances Act, it means any quantity greater than the quantity specified by the Central Government by notification in the official Gazette. The Central

Government has notified the small quantity and commercial quantity of “Alprazolam” as 5 grams and 100 grams respectively. In the instant case, the allegedly recovered intoxicant powder is 103 grams with the weight of the polythene bag which is marginally higher than 100 grams. Since, the exact weight of the polythene bag is not forthcoming, accordingly, it would be a debatable issue during the trial as to whether the recovered substance falls within the category of “commercial quantity or non-commercial quantity”. In case, the polythene bag is of a heavy material or in the form of a pouch with a lock, and the said weight of the polythene is deducted from the total weight of the intoxicant powder along with the weight of the polythene bag, which in the instant case is 103 grams; the recovery may fall in the category of “non-commercial quantity”. As regards, the involvement of the petitioner in another case FIR No.53 is concerned, suffice it to say, the petitioner has already been granted the concession of regular bail vide order dated 23.06.2021 (Annexure P-5). Admittedly, the investigation in this case is complete, challan stands presented and even the charges have been framed, thus, the trial is likely to take long time.

13. So far as the apprehension expressed by learned State counsel that the witnesses could be influenced by petitioner, suffice it to state that in the event of any such conduct, the prosecution can always approach the competent court for cancellation of bail. Accordingly, it is observed that the State / Prosecuting Agency / State police shall be at liberty to observe the behaviour of the petitioner during bail period, and in case it feels that the petitioner is indulging in influencing any of the witnesses or tampering with the prosecution evidence in any manner or otherwise causing interference with the progress of trial, it shall be open for the State / Prosecuting Agency / State police to move the trial Court for cancellation of bail, which

shall be decided by the trial Court on merits.

14. Keeping in view the aforementioned facts and circumstances, especially the fact that as per the FIR, it is mentioned that the petitioner had thrown a heavy polythene envelope allegedly containing intoxicating substance on one side of road, thus the alleged recovery being from the polythene envelope on the side of the road, it *prima facie* appears that the petitioner has not committed the offence. Furthermore, considering the age of the petitioner, it is unlikely that the petitioner would commit an offence in the NDPS Act while on the bail. Accordingly, the present petition under Section 439 Cr.P.C. seeking grant of regular bail to the petitioner (Gurmeet Kaur @ Gurmeeto) in case FIR No.96, dated 18.05.2021, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Hariana, District Hoshiarpur; is allowed and the petitioner is ordered to be released on regular bail subject to her furnishing bail/surety bonds to the satisfaction of the Illaqa Magistrate/Duty Magistrate / trial Court concerned.

15. However, before release, the concerned Station House Officer be informed and the petitioner shall inform the concerned Station House Officer about her address at which she intends to reside during the pendency of the case and any change in the address shall be communicated to the concerned Station House Officer, forthwith. The petitioner would furnish her telephone number to the concerned Station House Officer.

16. In addition, the petitioner (or anyone on her behalf) shall prepare an FDR in the sum of Rs.25,000/- and deposit the same with the trial Court. The same would be liable to be forfeited as per law, in case of absence of the petitioner from trial without sufficient cause.

17. Nothing expressed here-in-above shall be construed to be an

observation on merits of the case and the facts and circumstances recorded above are only for consideration of the prayer for bail at this stage.

- 18. The petition is accordingly disposed of.
- 19. Pending application/s, if any, shall also stand disposed of.

(HARSH BUNGER)
JUDGE

24th July, 2023
Himani

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