

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

209

CRM-M-20366 of 2023

Date of Decision:21.09.2023

Paramjit Kaur

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ruhani Chadha, Advocate,
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.288 dated 22.12.2022, under Sections 21 and 22 of the NDPS Act (Section 29 of the NDPS Act added later on), registered at Police Station Dharamkot, District Moga.

2. It is so submitted by learned counsel for the petitioner that the petitioner is a lady of 52 years of age and is in custody for more than nine months. He submitted that the investigation of the case has already been completed and the final report under Section 173 of the Code of Criminal Procedure has been presented to the competent Court and the case is now fixed for consideration on the point of framing of the charges. He submitted that the allegation against the petitioner was that when the police party was searching for suspicious elements,

then the present petitioner and the co-accused, namely Kulwinder Singh were seen and on seeing the police party, they tried to turn back and so far as the present petitioner is concerned, she had thrown away the plastic bag on the ground and from the plastic bag there was a recovery of two strips of Etizolam. The total weight of the aforesaid salt was 2.84 grams whereas the commercial quantity under the NDPS Act is 2.5 grams. He submitted that from the other co-accused there was an alleged recovery of 05 grams of heroin and the aforesaid co-accused has already been released on regular bail by the Sessions Court. He submitted that the petitioner has been falsely implicated in the present case and there was no recovery from the conscious possession of the petitioner and the concocted story made by the police in order to implicate the present petitioner because earlier she was involved in two more cases under the NDPS Act out of which she has already been acquitted in one case and in the other case there was no recovery effected from the petitioner and she was nominated on the basis of the disclosure statement of the co-accused and she is already on bail in that case. He further submitted that out of the two strips allegedly recovered from the petitioner only one strip was sent to the Forensic Science Laboratory for examination. He submitted that in view of the aforesaid circumstances, the bar under Section 37 of the NDPS Act will not apply in the present case because the recovery was not effected from the conscious possession of the petitioner.

3. On the other hand, Mr. Sarabjit Singh Cheema, learned DAG, Punjab has submitted that it is correct that the petitioner is in custody for more than nine months and the investigation of the case has already been completed and *challan* has been presented to the competent Court. He has however opposed the grant of

bail to the petitioner on the ground that qua the petitioner there was a recovery of 2.84 grams of Etizolam which is although marginally higher than the commercial quantity of 2.5 grams under the NDPS Act but certainly the case of the petitioner would be hit by the bar contained under Section 37 of the NDPS Act.

4. I have heard learned counsel for the parties.

5. It is a case where the petitioner is a lady of the age of 52 years and as per the allegations on seeing the police party she had thrown away a plastic bag on the ground and the recovery was effected from the road. It is a case of learned counsel for the petitioner that the petitioner has been falsely implicated on the ground that earlier she was involved in two more cases out of which she has already been acquitted in one case and in the another case she was nominated on the basis of disclosure statement of the co-accused and she is on bail. Investigation of the case has already been completed and *challan* has been presented in the present case. Although the alleged recovery which was not effected from the conscious possession of the petitioner is stated to be 2.84 grams which is marginally higher than the commercial quantity which is 2.5 grams under the NDPS Act but the bar of Section 37 of the NDPS Act has to be considered for the purpose of considering the grant of bail to the petitioner. In the present case the recovery is not from the person of the petitioner but it is from the ground according to the police. Only one strip out of the two strips allegedly recovered was sent to the Forensic Science Laboratory.

6. This Court is of the view that considering the aforesaid facts and circumstances, only for the purpose of considering the grant of bail to the petitioner, this Court is *prima facie* view that the petitioner is not guilty of

offence. It is made clear that the aforesaid cannot be deemed to be any observation on the merits of the case but only for the purpose of considering the petition for grant of bail.

6. In view of the aforesaid facts and circumstances and in the light of Article 21 of the Constitution of India, the petitioner deserves the concession of grant of regular bail. 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.

7. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of the present petition.

(JASGURPREET SINGH PURI)
JUDGE

September 21, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No