

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

CRM-M-29965-2023 (O&M)

Date of decision: 01.09.2023

Salma**...Petitioner****VERSUS****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Munish Gulati, Advocate, for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. Status report has been filed which is taken on record.
2. The present petition has been filed under Section 438 of the Code of Criminal Procedure for the grant of anticipatory bail to the petitioner in FIR No.93 dated 25.04.2023, under Sections 21(b) and 29 of NDPS Act, registered at Police Station Division No.5, District Ludhiana.
3. Learned counsel for the petitioner has submitted that the petitioner is a lady of the age of 35 years and she is having no criminal background and is not involved in any other case and even in the present case the police had apprehended one co-accused namely Bunty from whom there was a recovery of 20 grams of heroin which does not fall in the category of commercial quantity under the NDPS Act and thereafter, the name of the petitioner was nominated on the basis of disclosure statement made by the aforesaid co-accused Bunty that he had purchased the same from the present petitioner. He

submitted that the disclosure statement of a co-accused without any other substantial evidence to connect the accused with the offence is not admissible in evidence. He also referred to a judgment of the Hon'ble Supreme Court in *Tofan Singh V/s. State of Tamil Nadu' [2021 (1) RCR (Criminal) 1]* in this regard. He also referred to another judgment of the Hon'ble Supreme Court in *State of Haryana Versus Samarth Kumar, 2022 (3) RCR (Criminal) 991* to contend that the aforesaid plea is not available in a prayer for grant of anticipatory bail but may be available for a prayer for grant of regular bail but the aforesaid judgment is distinguishable on the facts of the present case in view of fact that in the present case the petitioner is a lady and is not involved in any other case and there is no substantial evidence available with the police even during investigation to connect the petitioner with the offence and she has already joined investigation and considering the aforesaid factual position, the order dated 07.06.2023 may be made absolute.

4. Mr. Sarabjit Singh Cheema, DAG, Punjab has submitted that so far as the joining of the investigation of the petitioner is concerned, he has instructions to state that she has already joined investigation. However, he submitted that during the course of investigation it was found that the petitioner was in constant touch by way of a telephone for large number of times with the co-accused Bunty and even on the day of the occurrence and therefore, the petitioner is not entitled for the grant of anticipatory bail.

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

6. The petitioner is a lady of the age of 35 years and she is stated to be not involved in any other case. The alleged confiscation of heroin from the co-accused, namely, Bunty does not fall in the category of commercial quantity

and therefore, the bar contained under Section 37 of the NDPS Act is not applicable in the present case. The mere fact that there are details of phone calls between the petitioner and the co-accused Bunty from whom there was a recovery of 20 grams of heroin itself cannot become a ground for denial of bail to the petitioner especially when the petitioner is having clean antecedents and the quantity does not fall in the category of commercial quantity and therefore, the aforesaid judgment in *State of Haryana Versus Samarth Kumar (Supra)* is distinguishable in the present case.

7. Consequently, the present petition is allowed and the order dated 07.06.2023 is hereby made absolute.

(JASGURPREET SINGH PURI)
JUDGE

01.09.2023
rakesh

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