

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

219

CRM-M-30604-2023 (O&M)

Date of Decision:07.07.2023

Raj Singh @ Raju

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present:- Mr. J.S. Sandhu, Advocate for the petitioner.

Ms.Navreet Kaur Barnala, AAG, Punjab.

AVNEESH JHINGAN J.(Oral)

1. Learned counsel for the petitioner at the very outset submits that this is the third petition seeking regular bail but inadvertently it has been mentioned as first petition. The contention is that earlier two petitions were dismissed as withdrawn vide order dated 16.03.2022 and 05.08.2022.

2. This third petition is filed seeking regular bail in case of FIR No.35 dated 14.03.2020 under Sections 22 and 29 of NDPS Act, 1985, registered at Police Station Khui Khera, District Fazilka, Punjab.

3. Learned counsel for the petitioner claims parity with co-accused Sunita Rani @ Seet Kaur, who was granted regular bail by this court on 26.05.2023.

4. On 26.05.2023, the following order was passed :-

“Through the present petition filed under Section 439 Cr.P.C. the petitioner seeks regular bail in FIR No.35 dated 14.03.2020 registered under Sections 21, 29, 61 and 85 of the Narcotic Drugs and Psychotropic Substances

Act, 1985 at Police Station Khui Khera, Tehsil and District Fazilka.

(2) The petitioner alongwith her co-accused his co-accused Raj Singh and Manjit Kaur were jointly found in illegal possession of 7000 tablets containing tramadol hydrochloride.

(3) Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case; she has suffered actual custody for 01 year and 07 months; she does not have any other criminal antecedents; no recovery of any drugs/intoxicant substance has been made from the petitioner's person; the investigation in the case is complete; earlier the petitioner was on interim bail for over 1½ years which concession she did not misuse and that since till date no prosecution witness has been examined, the petitioner's trial shall take a long time to conclude.

(4) Learned State counsel does not dispute the petitioner's period of incarceration and that she does not have any other criminal antecedents as also that she did not misuse the concession of interim bail granted to her earlier but opposes the grant of bail to the petitioner on the ground that she and her co-accused were found in illegal possession of 7000 tablets containing tramadol hydrochloride and if released on bail she is likely to indulge in similar offences.

(5) Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

*(6) The Supreme Court in Petition(s) for **Special Leave to Appeal (Crl.) No(s) 3221/2023-Hasanujjaman and ors. vs. The State of West Bengal** has held as follows: -*

“2. The allegations are that when the police party intercepted the petitioners along with another person riding on two motorcycles, they were found in possession of codeine phosphate in a consignment of phensedyl bottles loaded in two nylon bags. During the search, 115 bottles (100 ml. each) of phensedyl were recovered from the joint possession of the petitioners. They were arrested on the spot and have been in custody for more than one year and four months.

3. We have heard learned counsel for the parties and carefully perused the record.

4. The investigation is complete; chargesheet has been filed, though the charges are yet to be framed. The conclusion of trial will, thus, take some reasonable time, regardless of the direction issued by the High Court to conclude the same within one year from the date of framing of charges. The petitioners do not have any criminal antecedents. There is, thus, substantial

compliance of Section 37 of the NDPS Act.

5. In such circumstances, but without expressing any views on the merits of the case, we deem it appropriate to release the petitioners on bail subject to the terms and conditions as may be imposed by the Trial Court.”

(7) The petitioner is a 39 year old lady; her actual custody period is 01 year and 07 months; she does not have any other criminal antecedents; the investigation in the case is complete; earlier the petitioner was on interim bail for over 1½ years which concession she did not misuse and that since till date no prosecution witness has been examined, the petitioner’s trial is likely to take long time to conclude.

(8) In the light of the afore discussion as also the afore quoted opinion by the Supreme Court in Hasanujjaman’s case (supra), the present case is considered to be a fit one in which the petitioner be directed to be released on regular bail. Resultantly, subject to the satisfaction of the CJM/Duty Magistrate, Fazilka, the petitioner is directed to be released on bail. The petitioner is further directed to appear before the trial court regularly. In the event of she being absent, it shall again be taken as a misuse of concession of bail.

(9) It is further directed that while on bail the petitioner shall own and possess a smart mobile phone which shall be kept on at all times; the phone shall always be with the petitioner; she shall share the number of the phone as also her location with the SHO of the area where the petitioner normally resides; she shall mark her attendance on the Ist of each month in the concerned police station and that she shall also not leave the jurisdiction of the concerned police station without the prior permission of the SHO of such police station.

(10) The SHO of the concerned police station is further directed to maintain a record with regard to the above and after every six months forward a copy of the same to the concerned Senior Superintendent of Police for information.

(11) It is clarified that the above observations have been made only for the limited purpose of deciding the present petition and the same would not be construed to be an expression of opinion on the merits of the case.

(12) Additionally, it is clarified that in case the petitioner is found involved in any other case under the NDPS Act or other penal law, it shall amount to misuse of the concession of bail granted to her today, and in such a case, necessary consequences shall follow.”

5. Learned State Counsel opposes the prayer for grant of bail, however, is not disputing the fact that investigation is complete, challan

presented, petitioner is not involved in any other case and no recovery is to be made from him..

6. Without commenting on the merits of the case, considering the nature of allegations, on the basis of parity of petitioner vis-a-vis co-accused so far as grant of bail is concerned and though the investigation is complete conclusion of trial is likely to take time, the petitioner is granted bail subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/ Duty Magistrate concerned and complying conditions as imposed vide order dated 26.05.2023.

7. The petition is allowed.

8. It is clarified that observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

9. Since the main case has been decided, the pending application(s), if any, is rendered infructuous.

(AVNEESH JHINGAN)
JUDGE

07.07.2023
shweta

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