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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45706-2023 (O&M)
Date of decision: 19.09.2023

Kirandeep Kaur

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. A.S. Brar, Advocate, for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition been filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.34 dated 16.04.2023, under Section 15 of the NDPS Act, registered at Police Station Sadar Moga, District Moga.

2. Learned counsel for the petitioner submitted that it is a case where as per the allegations the petitioner alongwith her husband were travelling in a car at night time and on seeing the police party, the husband of the petitioner fled away and the petitioner who is a lady of the age of 40 years kept on sitting in the car and there was a recovery of 60 kgs. of poppy husk from the car. He further submitted that petitioner is not involved in any other case and has got clean antecedents and provisions of Section 42 of the NDPS Act were not complied with. He further submitted that present is a case which was planted

upon the petitioner and even otherwise also, there was no recovery from the conscious possession of the petitioner but stated to be from the car. He further submitted that even otherwise also at the most the liability would be fastened upon her husband and not on the petitioner and she has already faced incarceration for 5 months and 4 days and therefore, she may be considered for the grant of regular bail. He further submitted that the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner in view of the peculiar facts and circumstances of the present case.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has submitted that it is correct that the petitioner being wife of the other co-accused was sitting in the car and husband of the petitioner had fled away on seeing the police party. He further submitted that it is also correct that the petitioner is not involved in any other case but opposed the grant of regular bail to the petitioner on the ground that the total recovery from the car was 60 kgs. of poppy husk.

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

5. The petitioner is stated to be a lady of the age of 40 years and as per the allegations itself the petitioner kept on sitting in the car whereas her husband fled away. From the car there was a recovery of 60 kgs of poppy husk. The commercial quantity as per the NDPS Act is 50 kgs. and the present quantity is marginally higher than the aforesaid limit of commercial quantity. The petitioner is stated to be not involved in any other case and there was no recovery from the person of the petitioner but from the car which was being driven by her husband at night time. The allegations pertaining to non-compliance of Section 42 of the NDPS Act also can be seen at the time of trial.

The petitioner is a lady of the age of 40 years and stated to be having no criminal background and has already faced incarceration for 5 months and 4 days.

6. This Court is of the view that considering the aforesaid peculiar facts and circumstances, the bar contained under Section 37 of the NDPS Act will not apply in the present case since there has been no recovery from the person of the petitioner but from the car which was being driven by the husband of the petitioner who fled away from the spot and therefore, there are prima facie reasons to believe at least at this stage that the petitioner is not guilty of offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, it is not the case of the State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice and therefore, at this stage, both the ingredients contained under Section 37 of the NDPS Act for making a departure from the bar contained thereon remain satisfied.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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

19.09.2023

rakesh

(JASGURPREET SINGH PURI)

JUDGE

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