

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(204)

CRM-M-53228-2022 (O&M)

Date of decision:- 17.02.2023

Manjeet Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Narinder S. Lucky, Advocate for the petitioner.

Mr. Rohit Bansal, Senior DAG, Punjab.

SUVIR SEHGAL, J. (ORAL)

CRM-43974-2022

Exemption, as prayed for, is granted.

Application is allowed.

Main case

This is the third petition filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of post-arrest bail in FIR No.156 dated 06.11.2020, registered for offences under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), at Police Station Barnala, District Barnala, Annexure P-1.

Counsel for the petitioner submits that the petitioner, who is a 35 year old housewife, has been arrested and recovery of 2430 tablets of contraband has allegedly been effected from her. He submits that the petitioner is accused of being involved in drug trade and of supplying intoxicating tablets from outside the State to her father, Makhan Singh, and

co-accused, Jassa Singh, for sale. He submits that the story of the prosecution is highly improbable and the petitioner, who has a clean past, has been falsely implicated. He asserts that despite confinement since 10.11.2020, the trial is proceeding at a snails' pace and there is a remote possibility of its early conclusion. An argument has been raised by the counsel that the mandatory provisions of the NDPS Act have not been complied with at the time of alleged apprehension, search and seizure of the accused.

Per contra, learned State counsel, upon instructions received from ASI, Rohtas, has opposed the petition and has submitted that the contraband recovered from the petitioner is Tramadol and its total weight is 839.70 grams. He submits that as the recovery falls within the ambit of commercial quantity, rigor of Section 37 of the NDPS Act is attracted. He submits that co-accused, Jassa Singh, was arrested at the spot and co-accused, Makhan Singh, who managed to escape, was arrested a few months later and on his disclosure statement, recovery of 1090 tablets has been effected. As per instructions received by him, six out of twelve prosecution witnesses have been examined. State counsel has expressed an apprehension that the petitioner is likely to abscond as one of the co-accused, after being released on bail, has gone underground.

I have considered the submissions made by counsel for the parties.

Hon'ble Supreme Court in ***SLP (Crl) No.6690 of 2022*** titled as ***Dheeraj Kumar Shukla Versus The State of Uttar Pradesh***, decided on 25.01.2023, has held as under:-

“3. It is true that the quantity recovered from the petitioner is commercial in nature and the provisions of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for the last two and a half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at this stage, more so when the trial is yet to commence though the charges have been framed.”

Petitioner has been in continuous detention for the last twenty seven months and is not involved in any other criminal case. The trial is not likely to conclude in the near future. The involvement of the petitioner in the offence would remain a subject matter of debate before the Trial Court.

Keeping in view the length of custody and the observations made by the Supreme Court, this Court is inclined to accept the prayer made in the petition.

Without advertng to the merits or demerits of the arguments addressed, petition is allowed. Petitioner is ordered to be released on bail on furnishing adequate bail/surety bonds to the satisfaction of the Area Magistrate/Duty Magistrate/Trial Court concerned.

To allay the apprehension expressed by the State counsel, it is ordered that the petitioner would report at the police station concerned on the first Monday of every month, during the pendency of the trial.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

17.02.2023
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No