

CRM-M-56540-2022

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56540-2022
Date of Decision: 17.08.2023

Jaswinder Kaur Petitioner

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rishu Mahajan, 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 grant of regular bail to the petitioner in case bearing FIR No.147 dated 02.09.2022, under Section 22 of the NDPS Act, registered at Police Station Adampur, District Jalandhar.

2. It has been submitted by learned counsel for the petitioner that the petitioner is a lady of the age of 44 years and she is in custody for about 1 year. He further submitted that the investigation of the case has already been completed and thereafter, the challan has also been presented but the charges have not been framed till date. He also submitted that the petitioner is not involved in any other case and has clean antecedents. He further submitted that even as per the prosecution story, there was an alleged recovery of 170 injections of *Buprenorphin*, 150 intoxicant tablets of *Tramadol* and 72 capsules of *Tramadol* from the house of the petitioner and her husband. He submitted that firstly the house does not belong to the

petitioner nor her husband and as per the allegations also they were on rented accommodation and secondly, as per the FIR, the recovery was effected from a cot, which was lying in the house but neither the recovery was effected from the conscious possession of the petitioner nor the petitioner was arrested from the spot and it was a case which was planted by the police. He submitted that be that as it may, the petitioner especially being a lady has already faced incarceration for about 1 year and considering the aforesaid position that no recovery was effected from the conscious possession of the petitioner, the bar contained under Section 37 of the NDPS Act will not apply to the present petitioner, especially in the light of Article 21 of the Constitution of India.

3. On the other hand, Mr. Sarabjit Singh Chema, learned DAG, Punjab, has filed custody certificate of the petitioner in Court today and submitted that the petitioner is in custody for 11 months and 17 days and it is correct that the petitioner is not involved in any other case and has clean antecedents. He further submitted that it is also correct that the recovery was effected from the cot which was lying in the house of the petitioner but as per his instructions, the house where the recovery was effected was rented by the husband of the petitioner where they were residing. He has however opposed the grant of bail to the petitioner on the ground that the recovered quantity falls under the category of commercial quantity and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

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

5. The petitioner is a lady of the age of 44 years and she has

already faced incarceration for about 1 year. The investigation of the case has already been completed and the challan has also been presented before the competent Court. As per the FIR and as per the learned counsel for the petitioner, there was no recovery from the conscious possession of the petitioner and she was not apprehended on the spot. The bar contained under Section 37 of the NDPS Act would be seen in the light of Article 21 of the Constitution of India in view of the latest judgment passed by the Hon'ble Supreme Court in *Special Leave to Appeal (Criminal) No.4169 of 2023* titled as "*Rabi Prakash Vs. The State of Odisha*" decided on 13.07.2023.

The relevant portion of the judgment is reproduced as below:

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent-State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

6. Since there was no recovery from the conscious possession of the petitioner and she was not arrested on the spot and she has clean antecedents and is not involved in any other case, therefore, this Court is of the view that the custody of about one year of the petitioner, who being a lady, is sufficient for grant of regular bail to the petitioner, especially in the

light of Article 21 of the Constitution of India.

7. Consequently, the present petition is allowed and the petitioner is ordered to be released on regular bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

8. 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 present petition.

17.08.2023
Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |