

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

**CRM-M-61891-2023
DECIDED ON: 18.12.2023**

BINDER KAUR

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Tarun Singla, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C., seeking regular bail to the petitioner in FIR No.224, dated 07.10.2021, under Sections 22(c) of NDPS Act, 1985 (Section 29 of NDPS Act, 1985 added later on), registered at Police Station Canal Colony, Bathinda, District Bathinda.

2. Learned counsel for the petitioner contends that the petitioner has no concern with the contraband and has been falsely implicated on account of travelling in the vehicle with the other co-accused. He further asserts that the petitioner was neither the owner nor the driver of the said vehicle bearing No.DL-3CAG-2186 and also alleges violation of Section 50 of NDPS Act, 1985.

3. It is also the case set forth by the petitioner that no recovery whatsoever has been effected from the conscious possession of the petitioner, which was actually recovered from the car from two different bags, one beneath the front seat of the car and another under the rear seat of the car, which was being driven by Raju Singh only.

4. Learned State counsel has filed the custody certificate dated 18.12.2023 of the petitioner, which is taken on record. According to the custody certificate, the petitioner has faced incarceration of 2 years and 2 months, who is involved in one another case bearing FIR No.175 dated 25.08.2020 registered at Police Station Sangat under Section 15 of NDPS Act.

5. Learned State counsel has opposed the prayer made in the present petition stating that the quantity of contraband is commercial in nature i.e., 18000 tablets of Tramadol and 5700 tablets of Alprazolam. The petitioner was travelling in the car alongwith its owner namely Raju and there is no reason to disbelieve the story of the prosecution but could not dispute the fact that the contraband was lying in the car in two different bags, one beneath the front seat and another under the rear seat.

6. In the light of above, it is a disputed fact that as to whom the contraband belongs particularly in the light of the fact that another co-accused namely Baljinder Singh @ Balwinder Singh @ Vicky was granted the bail by this Court vide order dated 20.10.2023 passed in CRM-M-52351-2023 considering that the contraband belongs to the present petitioner, as was averred by the counsel for Baljinder Singh @ Balwinder Singh @ Vicky. However, it is also the specific stand of the petitioner in the present petition as well, that she is neither the owner of the vehicle nor she was driving it. She was only traveling in the car having no knowledge of the bags, as to whom it belongs.

7. As far as the contention qua the possession is concerned the same is to be established by leading evidence for which the investigation is already completed and the trial is in progress. Another contention qua Section 37 of the NDPS Act is concerned, at this stage the said aspect is not be considered wherein, the petitioner has suffered incarceration for a period of 2 years and 2 months and keeping the

petitioner behind the bars for an indefinite period would amounts to infringement of her right to life and liberty, as enshrined under Article 21 of Constitution of India and is against the principle ***“bail is rule and jail is an exception”***.

8. As far as the pendency of other cases is concerned as has been stated by learned State counsel, no doubt, at the time of granting bail, the criminal antecedents of the petitioner are to be looked into but at the same time it is equally true that the appreciation of evidence during the course of trial has to be looked into with reference to the evidence in that case alone and not with respect to the evidence in the other pending cases. In such eventuality strict adherence to the rule of denial of bail on account of pendency of other cases/convictions in all probability would lend the petitioner in a situation of denial the concession of bail.

9. Hence, the petitioner is directed to be released on regular bail on her furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

10. The present petition is hereby allowed.

11. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

18.12.2023

Sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>