

CRM-M-1423-2024

217 IN THE HIGH COURT OF PUNJAB AND HARYANA
 CHANDIGARH

CRM-M-1423-2024 (O&M)
Date of Decision: 16.01.2024

DALBIR KAUR

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vipin Mahajan, Advocate
 for the petitioner.

Mr. Digvijay Nagpal, AAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 30 dated 09.09.2023 registered under Sections 21, 25, 29 of NDPS Act at Police Station Special Operation Cell Amritsar, Intelligence Wing (CID), District Gurdaspur Punjab.

2. The present FIR was registered on the basis of secret information that Amarjeet Singh, Gursewek Singh, Sher Singh, Ranjit Singh and Dalbir Kaur (petitioner) are doing smuggling of Heroin and whenever Amarjeet Singh has to supply the Heroin, he takes the petitioner along with him, in order to avoid any suspicion. The secret informer further informed that all the accused are roaming in their Tata Indica Car bearing No. PB-10-CY-5466 in the area of Amritsar Batala bypass for supplying the Heroin. Finding the information reliable, a ruqa was sent through H.C. Rajesh Kumar for registration of the FIR. On these allegations, FIR(supra) was registered.

3. Learned counsel for the petitioner *inter alia* contends that

admittedly the contraband was recovered from the dash board of the Car. The petitioner has no connection whatsoever with the alleged offence. The car belongs to the nephew of the petitioner. It is only a matter of coincidence that the petitioner was also present in the car along with her husband and son and the case set up by the prosecution is highly improbable as no parent would like to put their children into trouble by taking him along. All the members of the family are incarcerated in judicial custody and there is no one in the family to look after the young unmarried daughter of the petitioner, who is living alone at home.

4. Per contra, learned State counsel has filed the custody certificate and opposes the prayer for grant of regular bail to the petitioner on the ground that this Court cannot examine the probable defence pleaded by the petitioner in the present case. Moreover, husband of the petitioner is involved in one more case under the NDPS Act and alleged contraband recovered in the present case falls under the ambit of commercial quantity and as such the petitioner is not entitled to the concession of regular bail.

5. Having heard the learned counsel for the parties and after perusing the record, it transpires that petitioner is behind the bars since 12.09.2023. Trial of the case is likely to take long time to conclude. Culpability, if any, would be determined at the time of trial. Conscious possession of the petitioner over the alleged contraband would be a moot point to be determined by the trial Court.

A two Judge bench of the Hon'ble Supreme Court in *Satender Kumar Antil vs Central Bureau of Investigation*, (2022) 10 SCC 51 has taken cognizance of their plight and held that in cases pertaining to

women, the Court is expected to show some sensitivity. Speaking through Justice M.M. Sundresh, the following observations were made:

"51. Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of. Obviously, the court has to satisfy itself that the accused person is sick or infirm. In a case pertaining to women, the court is expected to show some sensitivity. We have already taken note of the fact that many women who commit cognizable offenses are poor and illiterate. In many cases, upon being young they have children to take care of, and there are many instances when the children are to live in prisons. The statistics would show that more than 1000 children are living in prisons along with their mothers. This is an aspect that the courts are expected to take note of as it would not only involve the interest of the accused, but also the children who are not expected to get exposed to the prisons. There is a grave danger of their being inherited not only with poverty but with crime as well.

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58. Section 437 of the Code empowers the Magistrate to deal with all the offenses while considering an application for bail with the exception of an offense punishable either with life imprisonment or death triable exclusively by the Court of Sessions. The first proviso facilitates a court to conditionally release on bail an accused if he is under the age of 16 years or is a woman or is sick or infirm, as discussed earlier. This being a welfare legislation, though introduced by way of a proviso, has to be applied while considering release on bail either by the Court of Sessions or the High Court, as the case may be. The power under Section 439 of the Code is exercised against an order rejecting an application for bail and against an offence exclusively decided by the Court of Sessions. There cannot be a divided application of proviso to Section 437,

while exercising the power under Section 439. While dealing with a welfare legislation, a purposive interpretation giving the benefit to the needy person being the intendment is the role required to be played by the court. We do not wish to state that this proviso has to be considered favourably in all cases as the application depends upon the facts and circumstances contained therein. What is required is the consideration per se by the court of this proviso among other factors." (emphasis supplied)"

6. Without commenting anything on the merits of the case, lest it may prejudice the rights of the parties, the present petition is allowed and petitioner-Dalbir Kaur is ordered to be released on regular bail subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate.
7. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

16.01.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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