

CRM-M-5672-2023

105+214 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-5672-2023 (O&M)
Date of Decision: 01.02.2024

GEETA VERMA

...Petitioner

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Verma, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. AG Punjab.

HARPREET SINGH BRAR J. (Oral)

CRM-170-2024

This is an application under Section 482 of Cr.P.C. for placing on record Annexures P-3 to P-6 (affidavits) with the main case.

For the reasons mentioned in the application, same is allowed and Annexures P-3 to P-6 are taken on record subject to all just exceptions. Registry is directed to tag the same at the appropriate place.

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1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 236 dated 20.10.2022 registered under Sections 15/29 of Narcotic Drugs and Psychotropic Substances Act 1985 at Police Station Moti Nagar, District Ludhiana.

2. Present FIR was lodged on the allegations that on 20.10.2022, at about 5.30 PM, the police party was present in the area of Moti Nagar near Everest Public School. One informer approached the police

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party and informed that Geeta Verma w/o late Sh. Raghu Raj Verma (present petitioner) and Hira Bhardwaj have taken a room on rent in *Balveer Singh's Vehra*, in which they bring poppy husk from outside and then jointly sell the same in different areas of the city and in case a raid is conducted in the Courtyard of Balveer Singh, the accused can be caught along with poppy husk. The information was reliable and FIR was registered and the police party searched the Courtyard of Balveer Singh and recovered 100 KG of poppy husk. The petitioner and co-accused Hira Bhardwaj were apprehended as they were found in possession of 100 KG of poppy husk.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner is a household lady and she has been falsely implicated in the present case. The poppy husk was recovered from a place, which is accessible to many persons and not within the exclusive possession of the petitioner. Learned counsel further relies upon Annexures P-3 to P-6 to contend that Balveer Singh's Vehra constitute of 24 rooms, which is occupied by many persons, whereas the petitioner was residing only in one room and once the place of recovery is accessible to so many persons, there is no evidence available on record to prove the conscious possession of the petitioner over the alleged contraband. The petitioner is not involved in any other case.

4. Per contra, learned State counsel opposes the prayer of grant of regular bail to the petitioner on the ground that 100 KG of poppy husk was recovered from the conscious possession of the petitioner, which falls within 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 of the case, it transpires that the place of recovery is an open space, accessible to all. Whether the petitioner was in the exclusive possession of the said place, would be a moot point to be determined by the trial Court. The petitioner is behind the bars since 20.10.2022. The trial of the case has not even started till date, as none out of 14 prosecution witnesses, has been examined so far. The petitioner is not involved in any other case. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

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.

xxx xxx xxx

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. In view of the above, the present petition is allowed and the petitioner- Geeta Verma is ordered to be released on regular bail during trial on her furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

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.

01.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No