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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M No.15876 of 2024
Date of Decision:-09.04.2024

POOJA RANI

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Bhupinder K. Bhangu Advocate
for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

SANJIV BERRY, J.

The instant petition under Section 482 Cr.P.C. has been preferred by the petitioner for setting aside of the impugned order dated 22.02.2024 (Annexure P-2) passed by learned Judge, Special Court, Kapurthala, to the extent that the additional condition imposed regarding furnishing of one cash surety amounting to ₹2 lacs while granting concession of regular bail to the petitioner’s uncle namely Shinder Singh @ Tota in the following FIR (Annexure P-1):-

FIR No.	Dated	Sections	Police Station
0012	28.01.2024	21(b) and 29 of the NDPS Act	Subhanpur, District Kapurthala

2. It is, *inter alia*, contended by learned counsel for the petitioner that the uncle of petitioner namely Shinder Singh @ Tota has been

implicated by the police in a false case and recovery has been planted on him. The said Shinder Singh @ Tota had filed application for grant of regular bail after his arrest, which was allowed by the learned Judge, Special Court, Kapurthala vide impugned order dated 22.02.2024 (Annexure P-2), however, the learned Court imposed the condition that he will be released only on furnishing of personal bonds to the tune of ₹50,000/- with two sureties i.e. one surety in the like amount and one cash surety amounting to ₹2 lac subject to the conditions mentioned in the order.

3. It is further contended by learned counsel for the petitioner that the alleged recovery from the petitioner's uncle is non commercial in nature and petitioner is a poor person doing labour work and the petitioner as well as her uncle, namely Shinder Singh @ Tota, belong to the labour class and are unable to furnish the cash surety of ₹2 lac as per the order of the learned Trial Court and such a condition imposed by learned Court would tantamount to denial of benefit of bail, hence the prayer has been made to modify the same.

4. Per contra, learned State counsel has not disputed the factual matrix of the case and has admitted passing of the impugned order dated 22.02.2024 (Annexure P-2) by learned trial Court, however, he contends that the petitioner's uncle was found keeping in possession 15 grams of heroin when apprehended by the police and same does not fall within the purview of commercial quantity.

5. Arguments heard.

6. It is not disputed that Shinder Singh @ Tota had been arrested by the police in the instant FIR (Annexure P-1) on the allegations of keeping

in possession 15 grams of heroin, non commercial quantity. It is also not disputed that the learned Judge, Special Court, Kapurthala while allowing application under Section 439 for regular bail had passed impugned order (Annexure P-2) on 22.02.2024, operative part thereof reads as under:-

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“8. Perusal of police record shows that applicant/accused is presently in custody since from the date of his arrest in this case i.e. 28.01.2024. As per statement of ASI Sukhchain Singh, other FIR's have also been found registered against the applicant/accused under various offences including NDPS Act. However, recovery of alleged Heroin allegedly effected from the present applicant/accused in the present case falls under the category of non-commercial quantity. The presentation of challan and conclusion of the trial would take long time. No useful purpose will be served by detaining the applicant/accused in custody for indefinite period, rather it would be a burden on State's exchequer. So, keeping in view the facts and circumstances of this case, applicant/accused is ordered to be released on regular bail on his furnishing the bail bonds to the tune of ₹50,000/- with two sureties i.e. one surety in the like amount and one cash surety amounting to ₹2 lac, subject to following conditions:-

I. That the applicant/accused will not directly or indirectly make any inducement, threats or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

II. That the applicant/accused will not leave the territory of India without prior permission of the Court.

III. That the applicant/accused will appear in the court on each and every date of hearing.”

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7. The case put forth by the petitioner, duly supported by her affidavit is that she is a labourer and her uncle Shinder Singh @ Tota is in custody who is also working as a labourer and they have no means to satisfy the condition imposed by learned Judge, Special Court, Kapurthala for depositing ₹2 lacs as cash surety in terms of the order dated 22.02.2024

(Annexue P-2).

8. It is relevant to mention here that while dealing with the similar situation, Hon'ble Apex Court passed judgment cited as ***Guddan @ Roop Narayan vs. State of Rajasthan, 2023 (1) R.C.R. (Criminal) 762***, relevant part of observations made therein is as under:-

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“Criminal Procedure Code, 1973, Section 439-Bail- Excessive conditions of bail imposed by the High Court- Bail granted but in-fact, in practical manifestation, acted as a refusal to the grant of bail- The fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount- Conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail-Any other accused in a similar circumstance at this point would not be in custody-Appellant, because of the conditions imposed, has not been able to comply with the excessive requirements, be detained in custody endlessly? Held that to keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.”

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9. Undisputedly, the case of the petitioner is identical to the facts and circumstances as in ***Guddan's case (supra)***.

10. Considering the fact that the petitioner is a labourer and even accused belongs to family of labourers, it would not be feasible and practicable for them to arrange a cash surety of ₹2 lac to comply with the impugned order dated 22.02.2024 (Annexure P-2). Imposing of such

condition, in a way tantamount to refusal of the benefit of bail to the poor accused, therefore, in these circumstances, it is deemed appropriate and in the interest of justice that the impugned order dated 22.02.2024 (Annexure P-2), so far, it require the petitioner to furnish cash surety of ₹2 lac is unreasonable and unjust and as such is liable to be set aside. Accordingly, the condition requiring the petitioner to furnish cash surety of ₹2 lac in terms of the order dated 22.02.2024 (Annexure P-2) is hereby set-aside and the order dated 22.02.2024 (Annexure P-2) is hereby modified to the extent that Shinder Singh @ Tota, uncle of the petitioner shall furnish the personal bond to the tune of ₹50,000/- with two sureties in the like amount to the satisfaction of learned trial Court subject to the following conditions:-

- i. That the applicant/accused will not directly or indirectly make any inducement, threats or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.
- ii. That the applicant/accused will not leave the territory of India without prior permission of the Court.
- iii. That the applicant/accused will appear in the court on each and every date of hearing.

11. The present petition is disposed of with the above modification in the impugned order dated 22.02.2024 (Annexure P-2) passed by the learned Judge, Special Court, Kapurthala.

(SANJIV BERRY)

JUDGE

09.04.2024

Gyan

- i)

Whether speaking/reasoned?

Yes/No
- ii)

Whether reportable?

Yes/No