

CRM-M-31850-2023  
Decided on: 02.05.2024

Sarabjit Kaur ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. K.S. Sidhu, Advocate for the petitioner.

Mr. Sukhdev Singh, AAG, Punjab.

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ANOOP CHITKARA, J.

| FIR No. | Dated      | Police Station                            | Sections                  |
|---------|------------|-------------------------------------------|---------------------------|
| 59      | 26.06.2021 | Mallanwala, District<br>Ferozepur, Punjab | 22(c)/29 of NDPS Act 1985 |

1. The petitioner under arrest for violating the provisions as mentioned above, as per the FIR captioned above, has come up before this Court under Section 439 CrPC seeking bail on the ground that the quantity of contraband is less than commercial and rigours of S. 37 of NDPS Act do not apply.
2. In paragraph 17 of the bail petition, the accused declares that he has no criminal antecedents.
3. On 19.01.2024, Coordinate Bench of this Court had granted interim bail to the petitioner and the said order is continuing till date. On 22.04.2024, counsel for the petitioner prays for extension of interim bail and submitted that he has no objection if this Court while extending interim bail, imposes any stringent conditions including surrender of firearms and is also voluntarily agreeable to the condition that till the conclusion of the trial before the trial court, the petitioner shall keep only one mobile number, which is mentioned in AADHAR card, and within fifteen days of release from prison undertakes to disconnect all other mobile numbers.
4. Petitioner’s counsel submits custodial investigation would serve no purpose.
5. The State counsel handed over the reply dated 02.05.2024 and the same is taken

on record. By making reference to the reply, state counsel opposes the bail.

REASONING:

6. Facts of the case are being taken from the reply dated 02.05.2024, which reads as under:-

*"3. That in compliance to the order dated 22.04.2024, it is most respectfully submitted that FIR No.59 dated 26.06.2021. U/S 22/29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 was registered in Police Station Mallanwala against Jagjeet Singh alias Laddi son of Karnail Singh, Karnail Singh son of Darshan Singh and Sarbjeet Kaur wife of Karnail Singh (petitioner). Infact during routine patrolling by the police party, ASI Jaswinderpal Singh has gave a single to stop one swift car color white, but the driver of the said car firstly slowed the speed of the car and then tried to run away by speeding the car. On the conductor side, one old person and on the back seat of the car one lady was sitting. Then ASI alongwith other police personnel followed the above said car bearing no.PB-05-AG- 2281, then around one kilometer when the police reached at Makhu Road, then the car driver turned the car at the left side of Brick Klin, then old person thrown one bag color blue by opening the window glass and stopped the car. Then the ASI on the basis of suspicion asked the names and address, then the car driver told his name as Jagjeet Singh son of Karnail Singh r/o Ward no.8, Mallanwala and old person told his name as Karnail Singh s/o Darshan Singh and lady sitting behind at the back seat of the car told her name as Sarabjeet Kaur wife of Karnail Singh. During investigation, Karnail Singh son of Darshan Singh told that small bag color blue has thrown out from the car and that contains 450 intoxicant tablets. Then the small bag of blue color was picked up by the co-accused Karnail Singh and then it was opened. After opening the same, 450 loose intoxicant tablets were recovered from the said bag. The present petitioner was sitting in the said car. Thus, the present case has been registered. As per the FSL report, recovery falls under commercial quantity.*

*4. That the swift car bearing registration no.PB-05AG-2281 is registered in the name of co-accused Karnail Singh son of Darshan Singh.*

*5. That after completion of investigation, the challan against the present petitioner and co-accused persons has already been presented in the court of Shri Kewal Krishan, Judge Special Court Ferozepur on 21.02.2023 and the charge has been framed against the petitioner and co-accused persons on 24.03.2023 and now the case is fixed for 13.05.2024 for prosecution evidences. There are 12 prosecution witnesses, out of which one witness has already been examined.*

*6. That earlier no FIR was registered against the petitioner.*

Role of the petitioner

*7. That the petitioner was sitting in the car in question from which the recovery has been affected. Thus, it can be presumed that the recovered intoxicant tablets belong to the petitioner and other co-accused and the intoxicant tablets were in conscious possession of all the accused persons sitting in the car.*

7. Given the quantity which is small, the rigours of S. 37 of the NDPS Act do not apply in the present case.

8. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule. Section 2 (xxiii-a) defines small quantity as a quantity less than the quantity specified in the table of the NDPS Act. The remaining quantity falls in an undefined category, generally called an intermediate quantity. All Sections in the NDPS Act, which specify an offence, also mention the minimum and maximum sentence, depending upon the quantity of the substance. The commercial quantity mandates a minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of NDPS Act. When the quantity is less than commercial, the restrictions of Section 37 of the NDPS Act will not attract, and the factors for bail become similar to the offence regular statutes.

9. In Sami Ullaha v Superintendent Narcotic Control Bureau, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that in intermediate quantity, the rigors of the provisions of Section 37 may not be justified.

10. As per para 13 of the petition, petitioner was in custody since 24.05.2023 and released on bail pursuant to the order dated 19.01.2024. The petitioner is a first offender, and one of the relevant factors would be to provide an opportunity to course correct.

11. Given above, **petition allowed and interim order dated 19.01.2024 is made absolute, subject to compliance of following more conditions:-**

11(i) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the police officials, or any other person acquainted with the facts and the circumstances of the case, to dissuade them from disclosing such facts to the police, or the court, or to tamper with the evidence.

11(ii). During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall remain in force throughout the trial and after that in Section 437-A of the Cr.P.C., if not canceled due to non-appearance or breach of conditions.

12. Any observation made hereinabove is neither an expression of opinion on the

merits of the case nor shall the trial Court advert to these comments.

13. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

14. *There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

All pending applications, if any, stand disposed.

(ANOOP CHITKARA)  
JUDGE

02.05.2024  
anju rani

Whether speaking/reasoned: Yes  
Whether reportable: No.