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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32702-2024(O&M)

Date of Decision: 17.07.2024

Pooja @ Ruby

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Bhupinder K. Bhangu, Advocate, for the petitioner.

Mr. Adeshwar Singh Pannu, AAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.0245 dated 17.09.2022, under Sections 21/22/61/85 of NDPS Act, registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. Learned counsel appearing on behalf of the petitioner submitted that the petitioner is a lady of the age of 34 years and she has already faced incarceration for 1 year and 10 months. She submitted that it is a case where as per the allegations, the police party saw the petitioner who was coming on foot and on seeing the police party, she threw one packet in the bushes which she was carrying and thereafter, recovery was alleged to have been effected consisting of 1000 tablets of salt of Alprazolam which was having a weight of 101 grams and 10 grams of heroin. She submitted that so far as the aforesaid quantity of Alprazolam is concerned, it is exactly



on the margin of the commercial quantity because as per the NDPS Act, the commercial quantity for Alprazolam is 100 grams and so far as the quantity of heroin is concerned, it is only 10 grams and is a small quantity. She submitted that even otherwise also a perusal of the FIR would show that a stereotype FIR has been lodged that when the police party saw the petitioner, she was coming on foot and on seeing the police party, she threw away the packet which she was carrying and such kind of FIRs are numerous in the State of Punjab. She submitted that the reason as to why the petitioner was falsely implicated was that earlier she was involved in three cases out of which in one case she was convicted for 45 days under the NDPS Act and two cases are pending. She also submitted that even otherwise the charges in the present case have been framed on 21.03.2023 and almost 1 year and 4 months have elapsed but no material witness has been examined and only 2 out of 11 witnesses have been examined and out of which one witness was a person who had deposited the samples in the Forensic Laboratory and the other was the one who had carried the ruqa to the police station but no person from the police party or recovery witness, if any, has been examined and the reason for the same as to why the prosecution witnesses are not deposing before the trial Court is that they have falsely implicated the petitioner.

3. Learned counsel during the course of arguments has also supplied photocopies of the zimni orders passed by the learned trial Court after the framing of the charges and the same are taken on record as Mark-X. While referring to the zimni orders, she submitted that deliberately the prosecution witnesses are not appearing before the Court despite the fact



that twice the bailable warrants were issued to the prosecution witnesses by the learned trial Court which has resulted in the delay of trial for no fault of the petitioner but only because of the fault of the prosecution witnesses. She referred to a judgment of Hon'ble Supreme Court in ***Satender Kumar Antil Versus Central Bureau of Investigation and another [2022 (10) SCC 51]*** in this regard.

4. On the other hand, Mr. Adeshwar Singh Pannu, AAG, Punjab has submitted on instructions from ASI Gurmej Singh that so far as the custody of the petitioner is concerned, the same is correct and it is also correct that after the framing of the charges on 21.03.2023 only two witnesses have been examined as aforesaid. He has however opposed the grant of bail to the petitioner on the ground that the petitioner is a habitual offender and is involved in three more cases out of which in one case she has been convicted for 45 days in a case pertaining to the NDPS Act. So far as the quantity confiscated from the petitioner is concerned, he submitted that the salt of Alprazolam was having a weight of 101 grams which was 1 gram above the defined commercial quantity and so far as the quantity of heroin is concerned, the same does not fall in the category of commercial quantity under the NDPS Act.

5. I have heard the learned counsels for the parties.

6. The petitioner is stated to be a lady of the age of 34 years and she has already faced incarceration for 1 year and 10 months. The quantity of Alprazolam as alleged to have been recovered from the petitioner is exactly on the limit of the commercial quantity because allegedly from her there was a recovery of 101 grams of Alprazolam, whereas the commercial



quantity as per the NDPS Act is 100 grams. So far as the quantity of heroin is concerned, the same does not fall in the category of commercial quantity under the NDPS Act. The charges in the present case have been framed on 21.03.2023 and almost 1 year and 4 months have elapsed but no material witness has been examined and no person who was part of the police party or recovery witness has been examined and only formal witnesses have been examined till date. During the course of arguments, a query was raised to the learned State counsel as to what was the justification with regard to the same as to why the prosecution witnesses are not deposing before the Court despite bailable warrants being issued to them twice to which he could not give any justification even after seeking instructions from the officer who is present in the Court. Therefore, this Court is of the considered view that even otherwise also the bar of Section 37 of the NDPS Act will not apply to the petitioner.

7. After hearing the learned counsel for the parties, this Court is of the considered view that considering the fact that the petitioner is a lady of the age of 34 years and she is in custody for 1 year and 10 months, she is entitled for the grant of regular bail. The mere pendency of some other cases against the petitioner would not become a ground for denial of bail to the petitioner.

8. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned, if not required in any other case.

9. However, anything observed hereinabove shall not be treated as



an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

17.07.2024

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No