

CRM-M-39828-2023
Date of decision: 19.01.2024

Amandeep KaurPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. T.S. Grewal, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.13 dated 19.02.2023 under Sections 22/29 of the NDPS Act, 1985 (Section 29 of the NDPS Act added later on) registered at Police Station Khanauri, District Sangrur, Punjab.

The FIR was lodged on the allegation that on 19.02.2023, ASI Babu Singh along with other police officials was present near old *chungi*, Narwana Road, Khanauri in connection with patrolling and checking of suspected persons. At about 05:10 P.M, two ladies were seen coming on foot from Narwana side. One lady was holding a black colour bag in her right hand who on seeing the police party threw the said bag and strips were scattered on the road. Both the ladies tried to flee away. Both the ladies were apprehended. On being inquired, the lady who threw the bag disclosed her name as Surjit Kaur and the other lady disclosed her name as Amandeep Kaur (the present petitioner). On checking the said bag 28,000 tablets of Lomotil was

recovered.

Learned counsel for the petitioner *inter alia* contends that the alleged intoxicating tablets were recovered from the bag thrown by co-accused, Surjit Kaur. There is nothing on record to prove the conscious possession of the petitioner on the alleged contraband. The petitioner is a household lady and she has been falsely implicated in the present case. He further submits that she is not involved in any other case.

Per contra, the learned State counsel opposes the grant of regular bail to the petitioner on the ground that the intoxicating tablets recovered in the present case falls within the ambit of commercial quantity and keeping in view the gravity of offence and seriousness of the allegations, the petitioner is not entitled to regular bail.

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) "

Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars since 19.02.2023. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court on 15.06.2023. Charges were framed on 08.08.2023 and trial of the case has not made much progress as only 01 out of 19 prosecution witnesses have been examined so far. The culpability, if any, would be determined at the time of trial. No useful purpose shall be served by further detention of the accused/petitioner. Keeping the petitioner in

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further detention without the prospect of the trial being concluded in the near future, would be violative of her rights under Article 21 of the Constitution of India.

Keeping in view the facts and circumstances of the case and the fact that the petitioner is not involved in any other case and the likelihood of trial being prolonged, the present petition is allowed. Thus, without commenting upon the merits of the case lest it may prejudice the outcome of the trial, the petitioner-Amandeep Kaur 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.

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.

(HARPREET SINGH BRAR)
JUDGE

19.01.2024
Neha

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