



CRM-M-63622-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M-63622-2023 (O&M)
Date of decision:29.07.2024

Kaushalya Kaur @ Shallu

... Petitioner

Vs

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vivek. K. Thakur, Advocate for the petitioner.
Ms. Amrita Garg, AAG, Punjab.

SUVIR SEHGAL J. (ORAL)

CRM-13449-2024

1. Application is allowed, as prayed for.
2. Annexures P-5 to P-7 are taken on record.

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3. Instant second petition has been filed under Section 439
Cr.P.C., seeking grant of regular bail to the petitioner in:-

FIR No.	Dated	Police Station	Section
83	02.06.2023	Sadar Jagraon, District Ludhiana	21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act')

4. Case of the prosecution is that FIR, Annexure P-1 was
registered on the basis of a secret information and Kaushalya Kaur @
Shallu (present petitioner) was apprehended. Recovery of 258 grams
heroin was effected from her.



5. Counsel for the petitioner contends that the petitioner, who is a middle aged lady, is in custody since 06.06.2023 and the trial is at an initial state. He contends that the mandatory provisions of the NDPS Act, have not been complied with at the time of search and seizure. He submits that petitioner was named as an accused in three other criminal cases under the NPDS Act. By referring to order dated 08.02.2024, Annexure P-6, passed by Special Court, Ludhiana, he submits that the petitioner was acquitted in FIR No.365 dated 04.11.2017, lodged under Sections 21 and 22 of the NDPS Act, at Police Station Sidhwan Bet, Ludhiana. In FIR No. 64 dated 18.04.2017 lodged at the same Police Station for offence under the NDPS Act, he submits that by order dated 10.08.2021, Annexure P-5 petitioner was convicted and a sentence of 15 days imprisonment was imposed which she has undergone. He submits that insofar as third FIR is concerned, it is pending trial and the petitioner has been released on bail by the learned Special Judge, Ludhiana by order dated 30.04.2022.

6. Per contra, State counsel upon instructions from SI Surjit Singh, has opposed the petition and submits that as the contraband recovered from the petitioner was within the ambit of commercial quantity as per notification issued under the NDPS Act, therefore, she is not entitled to bail. State counsel has made a reference to Section 37 of the NDPS Act. She has specific instructions to state that out of 11 prosecution witnesses, none has been examined although four witnesses have been given up.



7.

I have heard counsel for the parties and considered their respective submissions.
8.

In *Jatin Arora @ Jatin Versus State of Punjab (CRM-M-18775-2021* decided on 07.07.2021), this Court has held that where the quantity of intoxicating substance recovered from the accused is marginally above the threshold limit of commercial quantity, the concession of bail can be extended to the accused in case there is a delay in the conclusion of the trial. Petitioner has been in custody for the last more than 13 months and despite the framing of the charge on 30.10.2023, prosecution has failed to examine even a single witness. Noticing that the petitioner is a middle aged lady, who is in detention since June, 2023, this court is entitled to extend the concession of bail to her.
9.

Without advertng to the merits or demerits of the arguments addressed, petition is allowed and the petitioner is ordered to be released on bail on furnishing bail/surety bonds to the satisfaction of the Trial Court/Duty Magistrate concerned.
10.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.
11.

Pending application, if any, also stands disposed of.

29.07.2024

pooja saini

(SUVIR SEHGAL)

JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No