

**CRM-M-65236 of 2024****1****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****223****CRM-M-65236 of 2024****DATE OF DECISION :- 13.01.2025****Kamlesh****...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MR. JUSTICE SUMEET GOEL****Present:-** Mr. Manoj R. Sharma, Advocate for the petitioner.

Mr. Anup Singh, AAG, Punjab.

*********SUMEET GOEL, J. (Oral)**

1. Present petition has been filed under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case bearing FIR No.168 dated 11.11.2024, registered for the offences punishable under Sections 21(b) & 27A of NDPS Act at Police Station Dinanagar, District Gurdaspur.
2. The case set up in the FIR in question (as set out in the present petition by the petitioner) is as follows:-

“SHO PS Dinanagar, Jai Bharat. I ASI alongwith ASI Gurdev Singh 723/G, ASI Naresh Kumar 562/G, CT Jiwanjot 588/G, PHC Rajwant Kaur 73/G, on government vehicle No.PB-65-BG-9224 Scorpio whose Driver ASI Narinjan Singh No.274/G, while patrolling from police station Dina Nagar and Ranjit Bagh Khojpur, reached near the highway road, then at the T point Khojpur near Amba da Bagh, a woman was seen standing with a black polythene in her right hand who on seeing the police party, got perplexed and tried to go through



the road who was stopped with the help of colleagues who was informed by me about my name, rank, posting and told that I am posted as incharge police post Bariyar. On my inquiry, the apprehended woman told her name as Kamlesh wife of late Gurmeet Lal resident of Ganna, Police Station Phillaur, District Jalandhar to whom I said that there is apprehension that there is some intoxicant substance in the black polythene having in her right hand, which is to be searched. You have a legal right that you can get the black polythene having in your hand searched through a Magistrate or a gazetted officer who can be called at the spot or you can be taken before them. Upon which, Kamlesh was informed about the notice u/s 50 NDPS Act who said that she is having full faith on me. I can conduct the checking of black polythene held in her right hand whose separate consent memo was prepared separately. Before checking the black polythene, public witness was tried to join into the police party but everyone while disclosing their inability did not ready to join the police party, then in front of the employees, with the help of the lady employee Rajwant Kaur, on checking the black polythene held in the right hand of accused Kamlesh, three hundred rupees Indian currency, 100/100 notes alongwith heroin was found in a transparent polythene which was weighed through the computerized scale and the same came to be 30 grams 03 milligram along with the transparent polythene which was put in to a plastic box and parcel was prepared and sealed the same with my seal AC/1 and took the same into police possession vide memo and the sample seal was prepared separately and Form No.4 was filled at the spot. The seal after use, handed over to ASI Gurdev Singh No.723/G and Kamlesh said that she had purchased this heroin from an unknown person to sell the same, whose name and mobile number she does not know. As such, accused Kamlesh w/o late Gurmeet Lal resident of Ganna police station Phillaur, District Jalandhar has committed the offence 21-B,



27A-61-85 NDPS ACT by keeping 30 grams of 03 milligram of heroin along with drug money of Rs.300. Regarding the recovery in the FIR, different video clips have been prepared in E Sakshya APP. After writing the ruka, the same is being sent to the police station Dinanagar by hand through CT Jeevanjot Singh No.588/G. After registering the FIR, number be intimated. Special reports be prepared and be sent to the Illaqa Magistrate and Officers. Control room e informed through wireless. I ASI alongwith colleagues busy in investigation at the spot. Sd- Amrik Chand ASI, PS Dinanagar Dated 11.11.2024. Today in the area of T Point Highway Road Khojpur Near Amba Da Bagh at 10:05 PM.”

3. Learned counsel for the petitioner has argued that the petitioner is in custody since 11.11.2024. Learned counsel has further submitted that the prosecution case is that 30.3 gms of heroin and Rs.300/- of drug money has been recovered from the petitioner. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated into the FIR in question. Learned counsel for the petitioner has further iterated that the police has not adhered to mandatory provisions of NDPS Act, 1985 while arresting the petitioner. Learned counsel for the petitioner has further submitted that there is no other case against the petitioner under the NDPS Act. In this view of the matter, learned counsel has prayed for grant of regular bail.

4. Learned State counsel has opposed the present petition arguing that the allegations raised are serious in nature and thus the petitioner does not deserve the concession of the regular bail. Learned State counsel seeks to place on record custody certificate dated 10.01.2025 in Court, which is taken on record.

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5. I have heard counsel for the parties and have gone through the available records of the case.

6. The petitioner was arrested on 11.11.2024 and the matter is still under investigation. The FIR in question pertains to a non-commercial quantity of contraband under NDPS Act of 1985. The rival contention of learned counsel for the parties; as to whether the petitioner has been falsely implicated into the FIR in question and as to whether the police has complied with the mandatory provisions of NDPS Act, 1985 while arresting the petitioner; shall be gone into during the course of trial. This Court does not deem it appropriate to delve deep into these rival contentions, at this stage, lest it may prejudice the trial. Nothing tangible has been brought forward to indicate the likelihood of the petitioner absconding from the process of justice or interfering with the prosecution evidence.

As per custody certificate dated 10.01.2025 filed by learned State counsel, the petitioner has suffered incarceration for about 01month and 29 days. However, the petitioner is stated to have been involved in four other cases pertaining to IPC, primarily under Section 380 thereof. Indubitably, the antecedents of a person are required to be accounted for while considering a regular bail petition preferred by him. However, this factum cannot be a ground sufficient by itself, to decline the concession of regular bail to the petitioner in the FIR in question when a case is made out for grant of regular bail *qua* the FIR in question by ratiocinating upon the facts/circumstances of the said FIR. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi vs. State of U.P. and another, 2012(1) R.C.R. (Criminal) 586***; a

Division Bench judgment of the Hon'ble Calcutta High Court in case of

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Sridhar Das vs. State, 1998(2) R.C.R. (Criminal) 477 & judgments of this Court in *CRM-M-38822-2021* titled as *Akhilesh Singh vs. State of Haryana*, decided on 29.11.2021 and *Balraj vs. State of Haryana, 1998(3) R.C.R. (Criminal) 191*.

Further more, the petitioner is a lady aged about 44 years hence her bail petition ought to be considered in view of proviso to Section 480(2) BNSS. It is pertinent to mention herein that the proviso to Section 480 BNSS, 2023 is *para materia* with proviso to Section 437 Cr.P.C., 1973. In this regard, it would be apposite to refer herein to a judgment passed by this Court on 14.03.2024 in CRM-M-11503-2024 titled as '*Ravinder Kaur Vs. State of Punjab*' (dealing with proviso to Section 437 Cr.P.C.), relevant thereof reads as under:

*"It would be apposite to refer herein to the dicta of a judgment of the Hon'ble Supreme Court in a case of '**Satender Kumar Antil Vs. Central Bureau of Investigation & Anr., 2022(10) SCC 51**', which held as under:*

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.”

Suffice to say, further detention of the petitioner as an undertrial is not warranted in the facts and circumstances of the case.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on her furnishing bail/surety bonds to the satisfaction of the Ld. concerned CJM/Duty Magistrate. However, in addition to conditions that may be imposed by the concerned CJM/Duty Magistrate, the petitioner shall remain bound by the following conditions:-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence, oral or documentary, during the trial.
- (iii) The petitioner shall not absent herself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit her passport, if any, with the trial Court.
- (vi) The petitioner shall give her cell-phone number to the Investigating Officer/SHO of concerned Police



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Station and shall not change her cell-phone number without prior permission of the trial Court/Illaqa Magistrate.

(vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by concerned CJM/Duty Magistrate as directed hereinabove or upon showing any other sufficient cause, the State/complainant shall be at liberty to move cancellation of bail of the petitioner.

09. Ordered accordingly.

10. Nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(SUMEET GOEL)
JUDGE

13.01.2025
P.Singh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No