



CRM-M-27239-2024

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(201)

CRM-M-27239-2024

Date of Decision : 22.01.2025

Nirmala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Lalit Kumar Narang, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

KULDEEP TIWARI, J.(Oral)

1. This is the second petition, filed under Section 439 Cr.P.C., wherein, the petitioner prays for grant of regular bail in case FIR No.253 dated 05.04.2023 (Annexure P-1), under Section 21 (c) of the NDPS Act, 1985, registered at Police Station Rohtak City, District Rohtak.

2. The earlier bail application, preferred by the petitioner was dismissed as withdrawn, by drawing an order dated 20.03.2024 (Annexure P-4), passed by this Court.

3. On asking for the relief (supra), learned counsel for the petitioner submits, that since the dismissal of the earlier bail application, there is no progress in the trial, as no prosecution witness has been examined, out of total 18 witnesses, as cited by the prosecution, as on date. He further submits that the petitioner is a lady and has undergone incarceration of more than 01 year and 09 months, as on today. Though, the petitioner is stated to



be involved in one other case, under the NDPS Act. However, in that case, she is on bail.

4. In the instant case, the petitioner was caught carrying 265 grams of heroin, which is marginally above the prescribed quantity, under the schedule and undisputedly falls under the ambit of commercial quantity, as more than 250 grams, falls under the ambit of commercial, as per the schedule attached with the NDPS Act.

5. Though the learned counsel for the petitioner had addressed the arguments on merits of the instant case, to the effect, that some of the mandatory provisions of the NDPS Act, has not been complied with. However, this Court, refrains itself from making any observation on such submissions. The entire thrust of the arguments revolves around the period of incarceration undergone by the petitioner.

6. Learned State counsel, on instructions imparted to him from the quarter concerned, has opposed the grant of concession of regular bail to the petitioner, on the ground, that the recovery effected in the instant case, falls under the ambit of commercial quantity, and therefore, the rigor of Section 37 of the NDPS Act, comes into operation, and both the requisite conditions, as envisaged under Section 37 of the NDPS Act, are not fulfilled by the petitioner, therefore, she does not deserve the relief of regular bail.

7. Learned State counsel has also placed on record the custody certificate dated 21.01.2025, qua the petitioner, today in the Court. The same is taken on record.

8. The petitioner was arrested on 05.04.2023, while carrying 265 grams of heroin. The final report in the instant FIR, was filed on dated 24.10.2024. It is not in dispute that no prosecution witness has been



examined, out of total 18 witnesses, as cited by the prosecution, as on today, and the petitioner, who is stated to be involved in one other case under the NDPS Act, is on bail. So far as, the rigor of Section 37 of the NDPS Act, is concerned, this Court, in a number of judgments has already observed that long incarceration would dilute the rigor of Section 37 of the NDPS Act.

9. This Court finds vigor from the judgment of the Hon'ble Supreme Court in ***“Rabi Prakash Versus The State of Odisha”, Special Leave to Appeal (Criminal) No.4169 of 2023***, wherein, the Court has also discussed the effect of Section 37 of the NDPS Act, in such like cases of long custody. The relevant portion of the aforesaid judgment contained in para No.4 is reproduced as under:-

“4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.”

10. This Court has heard the rival submission of the parties concerned, and is of the view that the instant petition is amenable to be allowed; (i) considering the period of incarceration undergone by the petitioner, (ii) specifically the fact that the petitioner, who is stated to be involved in one other case, under the NDPS Act, is on the bail; (iii) and



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considering that no prosecution witness has been examined, out of total 18 witnesses, as cited by the prosecution, as on today, this Court deems it appropriate to enlarge the present petitioner on regular bail. Accordingly, the instant petition is **allowed**.

11. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/trial Court/Duty Magistrate, concerned.

12. In case, in future, the petitioner is found to be involved, in such like similar offences, the respondent-State is at liberty, to file an appropriate application for cancellation of the bail granted to the petitioner.

13. However, anything observed hereinabove shall have no effect on the merits of the case and is meant for deciding the present petition only.

(KULDEEP TIWARI)
JUDGE

January 22, 2025
Manpreet

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