



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

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CRM-M-48638-2024 (O&M)

Date of decision: 20.02.2025

Jagir Kaur @ Billo

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this petition filed under Section 439 Cr.P.C., is for grant of regular bail to the petitioner in FIR No.0090 dated 11.07.2024 registered under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') IPC at Police Station Subhanpur, District Kapurthala.

2. As per the allegations in the FIR, on 11.07.2024, a group of police officers, including ASI Devinder Singh, ASI/LR Kulwinder Singh, CT Prabhjot Singh, CT Tajinder Singh, L/Sct Suman Kumari, and PHG Manjot Singh, were patrolling in village Lakhana Khole with a laptop printer. Upon reaching the area, a woman on seeing the police party became perplexed and thrown a plastic bag. Thereafter, the police party stopped her, identified themselves, and inquired about the contents of the bag. Thereafter, Jagir Kaur admitted that the bag contained



intoxicants, including heroin. The police party then proceeded to search the bag, and recovery of 5 grams of heroin and 26.26 grams of another intoxicating substance was effected. The substances were weighed, sealed, and labeled accordingly. Jagir Kaur was arrested and the FIR (supra) was registered.

3. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has been falsely implicated in the present case. Further the alleged contraband, which is recovered from the possession of the petitioner, does not falls within the ambit of commercial quantity and as such, the embargo under Section 37 of the NDPS Act, is not applicable to the case of the present petitioner. He further submits that the petitioner has suffered incarceration of more than 07 months and not even a single prosecution witness has been examined. Further there is a gross violation of the mandatory safeguards provided under Sections 50 and 52-A of the NDPS Act.

Learned counsel for the petitioner further contends that although the petitioner is involved in other cases registered under the NDPS Act, however, she is on bail in all those cases and to support his contentions, he has relied upon the judgment of the Hon'ble Supreme Court in "***Maulana Mohd. Amir Rashadi vs. State of U.P. and another***", 2012 (2) SCC 382, and this Court in "***Amritpal Singh vs State of Punjab***", 2022(4) Law Herald 2911. He further submits that there are total 14 prosecution witnesses cited in the list of witnesses,



out of which, none has been examined till date and the trial is likely to take long time in conclusion.

5. *Per contra*, learned State counsel has filed custody certificate today in the Court, which is taken on record and opposes the prayer of the petitioner on the ground that the petitioner is a habitual offender and involved in 08 more cases and there is sufficient evidence to prove the complicity of the petitioner, however, he could not controvert the fact that the alleged contraband involved in the present case, does not falls within the ambit of commercial quantity and out of 14 PWs, none has been examined till date.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner is behind the bars from the last 07 months and 06 days. Investigation is complete. The final report under Section 173 Cr.P.C. was presented before the concerned Court. Charges were framed and trial of the case has not made much progress. Out of 14 prosecution witnesses, no PW has been examined so far.

7. A two Judge Bench of Hon'ble Supreme Court in ***"Satender Kumar Antil vs. CBI"***, (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with



offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

8. Further the culpability, if any, would be determined at the time of trial and as such, no useful purpose will be served by further detention of the petitioner-accused. Keeping the petitioner in further detention without the prospect of the trial being concluded in the near future, would be violative of his rights under Article 21 of the Constitution of India.

9. Further keeping in view the law laid down by the Hon'ble Supreme Court of India in ***“Prabhakar Tewari vs. State of U.P. and another”*** 2020 (1) R.C.R. (Criminal 831) and ***“Maulana Mohd. Amir Rashadi's case (supra)***, the involvement of the petitioner in other cases would not be a ground to refuse grant of concession of regular bail.

9. In view the discussion above, the present petition is allowed. Accordingly, without commenting upon the merits of the case, the petitioner namely Jagir Kaur @ Billo is ordered to be released on regular bail during pendency of the trial, on her furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court/Duty Magistrate.



10. Nothing observed hereinabove shall be construed to be expression of an opinion by this Court on merits of the case. The learned Court below is directed to proceed with the matter on its own merits, lest it may prejudice the trial.

(HARPREET SINGH BRAR)
JUDGE

20.02.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No