



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

**CRM-M-65249-2023**

Date of Decision: 18.02.2025

Harparkash Kaur

..... Petitioner

Versus

Union of India and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Amit Chaudhary, Advocate, for the petitioner.

Ms. Puneeta Sethi, Senior Panel Counsel for NCB.

Mr. Tanuj Sharma, AAG, Haryana.

**Rajesh Bhardwaj, J. (ORAL)**

1.                    Petitioner has approached this Court by way of present second petition praying for granting her regular bail in case FIR No.40 dated 26.05.2022 under Sections 8, 18, 25, 29, 60 and 62 of NDPS Act, registered at Police Station NCB Chandigarh, District Ambala.

2.                    As per facts of the case, complaint in the present case was filed by Narcotic Control Bureau. It was alleged that on 26.05.2022, Junior Intelligence Officer received a secret information that two persons, namely, Tejbir Singh and Jaspal were coming back from Jharkhand in Swift car bearing registration No.PB-46Y-9207 with 10-15 kgs opium. On finding the information reliable, necessary action was taken and *naka* was laid by the police. On finding the disclosed vehicle, the same was stopped and on asking, the inmates of vehicle disclosed their names as Jaspal Singh, Harparkash Kaur (petitioner) and Tejbir Singh. They were given offer for the search of the car and on search, the recovery of opium from the gear lever of the car and dicky was made and total 15 packets were recovered totally weighing 14.7 kgs of opium. They failed to produce any licence



regarding the possession of the same. Thus, all three were arrested on the spot. On registration of the FIR, the investigation commenced. The samples taken were sent to the FSL. The petitioner approached the Court of learned Additional Sessions Judge, Amabala praying for grant of regular bail. However, after hearing both the sides, the learned Court finding no merit in the same, dismissed the bail application filed by the petitioner vide order dated 09.12.2022. Thereafter, the petitioner approached this Court by way of filing CRM-M-10352-2023 praying for grant of bail, however, the same was dismissed as withdrawn vide order dated 22.05.2023. Hence, the petitioner has again approached this Court praying for grant of bail by way of filing the present second petition.

3. It has been vehemently contended by learned counsel for the petitioner that the petitioner is 70 years old woman, who has been falsely implicated in this case. He submits that the case of the prosecution is based on the alleged secret information, however, name of the petitioner was never mentioned in the same. He submits that no recovery at the instance of the petitioner was effected, however, as per case of the prosecution itself, recovery of alleged 14.7 Kgs of opium from the car was effected at the instance of co-accused Tejbir Singh and Jaspal Singh. He submits that the petitioner has no criminal antecedents and she is behind bars since the date of her arrest. He submits that there is violation of mandatory provisions of Sections 42 and 50 of the NDPS Act. He submits that the petitioner has suffered incarceration of more than 02 years 08 months, however, there is no progress in the trial, hence, right of speedy trial of the petitioner is defeated. He, thus, submits that in the overall facts and circumstances, the petitioner



deserves to be granted bail.

4. Per contra, learned counsel for NCB has opposed the submissions made by counsel for the petitioner. She has drawn the attention of this Court to the status report filed and has submitted that the complicity of the petitioner is beyond any doubt. She was arrested on the spot and during the disclosure statement made by co-accused, her involvement is duly proved. She submits that even from the search of the house of the petitioner, Rs.2 lacs alongwith 52 grams of opium was recovered. She submits that quantity recovered in the present case is heavy commercial quantity, thus, provisions of Section 37 of the NDPS Act, are attracted. She further apprises the Court that out of total 20 prosecution witnesses, 02 prosecution witnesses, have been examined. She relies on the judgments of Hon'ble Supreme Court in State by the Inspector of Police vs. B. Ramu in Criminal Appeal arising out of SLP (Crl.) No.8137-2022 decided on 12.02.2024. She, thus, submits that no case for grant of regular bail to the petitioner is made out.

5. After hearing counsel for the parties and perusing the record, it is apparent that case of the prosecution is based on the secret information, however, perusal of the complaint would show that name of the petitioner was not mentioned in the secret information. However, as per case of the prosecution, the petitioner was arrested on the spot. Recovery was effected from the car at the instance of co-accused Tejbir Singh and Jaspal Singh. Custody certificate filed by the State would show that the petitioner has suffered incarceration of 02 years 08 months 21 days as on 17.02.2025. It further reveals that she has no criminal antecedents. On appraisal of the



judgment relied upon by counsel for NCB, it is apparent that the case in hand is not anticipatory bail, but it is a case of regular bail. Though provisions of Section 37 of the NDPS Act, are attracted, however, there is no gainsaying that speedy trial is the right of every accused. Out of total 20 prosecution witnesses, only 02 witnesses have been examined so far.

6. As held by the Hon'ble Supreme Court in ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260***, this Court is of the opinion that the case of the petitioner is covered by the ratio of law laid down by the Hon'ble Supreme Court. In the abovesaid case Hon'ble Supreme Court expressed its views as under:-

*19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.*

*20 xxxxx*

*21 .....it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.*

*22 xxxxx*

*23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the*



*crime, more honour is paid to the criminal”<sup>22</sup> (also see Donald Clemmer’s ‘The Prison Community’ published in 1940<sup>23</sup>). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily.’*

7. The veracity of the allegations would be assessed only after the conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficient long time. Keeping in view the arguments raised by both the sides and perusing the record, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail to the petitioner.

8. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on her furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

9. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

**(RAJESH BHARDWAJ)**  
**JUDGE**

**18.02.2025**

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Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No