

Law Today Live Doc. Id. 15137

PUNJAB AND HARYANA HIGH COURT

Before: Arun Monga, J.

CRM-M-16921 of 2020 (O&M)

Decided on: 15.07.2020

Pinki Kaur

Petitioner

Versus

State of Punjab

Respondent

Present:

Ms. Manpreet Ghuman, Advocate, for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

(Presence marked through video conference)

Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- Narcotic Drugs and Psychotropic Substances, Act, 1985 (61 of 1985), Section 22, 61, 85 – Alprsafe (2900 tablets of 05 mg each) were recovered from two – Regular bail -- Petitioner is in custody since 21.04.2020 -- Applicability of provisions of NDPS Act or Drugs and Cosmetics Act, is a debatable question that will be adjudicated at the trial only -- In the present scenario of Covid-19 pandemic where the Courts are working with restrictions and taking up only urgent matters, there is no likelihood of commencing or concluding of trial in near future -- Petitioner is a widow with minor children -- FSL report has yet not received to ascertain the quantity of the alleged scheduled drug contained therein -- Petition is allowed.

(Para 1,2,5)

Cases referred:

1. Parveen Singh @ Dunga Vs. State of Punjab, CRM-M-920 of 2014 decided on 11.03.2014.
2. Rachhpal Singh @ Goldi Vs. State of Punjab, CRM-M-34998 of 2016 decided on 15.02.2017.
3. Sodhi Singh @ Satnam Singh Vs. State of Punjab, CRMM-26047 of 2018 decided on 25.09.2018.
4. Rajinder Singh Vs. State of Punjab, CRM-M-37897 of 2018 decided on 17.09.2018.

JUDGMENT

ARUN MONGA, J. (ORAL) –

1. The petitioner is seeking regular bail in FIR No. 238 dated 22.04.2020, registered under Section 22, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act), Police Station City, Barnala, District Barnala.

2. As per allegations in the FIR, a secret information about selling of intoxicants tablets by the petitioner and one Rajinder Singh @ Bhinder was reduced in writing and sent to the police station for registration of the case. A raid was then conducted and 2900 tables of Alprsafe of 0.5 mg each were got

recovered from the petitioner and Rajinder Singh.

3. Learned counsel for the petitioner strenuously argues that petitioner, a widow and mother of two minor school going children, has been falsely implicated in the case, owing to certain dispute of her brother. According to her, petitioner is a house wife and law abiding citizen and she does not have any antecedents of criminal history or involvement in any pending investigation or trial. Further, on merits, she submits that the provisions of NDPS Act have wrongly been invoked. At most the case falls under Drugs and Cosmetics Act for keeping the tablets without any license, she would argue. In support of her arguments, she has relies upon decisions rendered by the Coordinate Benches in **CRM-M-920 of 2014 (Parveen Singh @ Dunga Vs. State of Punjab, decided on 11.03.2014)**, **CRM-M-34998 of 2016 (Rachhpal Singh @ Goldi Vs. State of Punjab, decided on 15.02.2017)**, **CRMM-26047 of 2018(Sodhi Singh @ Satnam Singh Vs. State of Punjab, decided on 25.09.2018)** and **CRM-M-37897 of 2018 (Rajinder Singh Vs. State of Punjab, decided on 17.09.2018)**. Relied on case law, *ibid*, she contends that this Court in the similar circumstances, where provisions of NDPS Act had been wrongly applied instead of Drugs and Cosmetics Act, granted the concession of regular bail to the accused therein and even in the case where the alleged quantity of Alprazolem was much higher than the case in hand. She further submits that no proper procedure was even followed before invoking the stringent provisions of NDPS Act. She submits that petitioner was taken away from her home on 21.04.2020 and since then she is in custody.

4. On the other hand, learned State counsel opposes the bail plea. According to him, the recovery falls within “commercial quantity” and the petitioner is not entitled to bail. According to him, FSL report is yet to be receives. He, however, admits that trial is yet to commence.

5. The petitioner is in custody since 21.04.2020. Applicability of provisions of NDPS Act or Drugs and Cosmetics Act, is a debatable question that will be adjudicated at the trial only and in the present scenario of Covid-19 pandemic where the Courts are working with restrictions and taking up only urgent matters, there is no likelihood of commencing or concluding of trial in near future. The petitioner is a widow with minor children. FSL report has yet not received to ascertain the quantity of the alleged scheduled drug contained therein. Without expressing any opinion on the merits of the case and relying on view taken by this Court in the cases cited, *ibid* I am of the opinion that petitioner is entitled to bail. Accordingly, the petition is allowed. The petitioner shall be released on bail on her furnishing bail bonds and surety bonds to the satisfaction of Chief Judicial Magistrate/ Duty Magistrate, Barnala, as the case may be.

Petition allowed.
