

**209 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-8146-2023****Date of decision : 24.04.2023****Balraj Singh @ Raju****.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. R. Kartikeya, Advocate
for the petitioner.****Mr. Karunesh Kaushal, AAG, Punjab.***********RAJESH BHARDWAJ, J. (Oral)**

Prayer in the present petition is for grant of regular bail to the petitioner in case FIR No.43 dated 25.07.2015, under Sections 21, 29 of the NDPS Act, Section 473 of the IPC (added later on) at Police Station Sarai Amanat Khan, Amritsar City.

As per facts of the case on 25.07.2015 when the police party was on patrolling duty, they stopped two young persons coming on the motorcycle. On enquiry, they disclosed their name as Rajvir Singh @ Raju and Dilbagh Singh @ Bagha. The bags were slung on their shoulders. On seeing the police, they got perplexed. However, they were stopped by the police party. They were asked about the kit (bag) being carried by them on their shoulders. They were suspected to be carrying narcotic and thus, were given offer for their search before any Gazetted Officer or Magistrate. On their consent, search of the bags were carried out in front of the Gazetted Officer and recovery of 6 kg of heroin from each bag being carried by them was effected i.e. in all 12 kgs of heroin

was recovered. As the contraband being 12 kgs was without any license, the FIR was registered and investigation commenced. During investigation, both the arrested accused namely, Dilbagh Singh @ Bagha and Rajvir Singh @ Raju made disclosure statement about the petitioner Balraj Singh @ Raju; his brother Harpal Singh @ Palla and mother Rajwant Kaur regarding their complicity in the present case. The petitioner was already in jail in some other cases and his custody was taken on production warrant. He was taken to his home from where on his disclosure another 6 kgs Heroin was recovered from his home. Thus, total 18 kgs of Heroin was allegedly recovered in the present FIR. The petitioner was arrested in this case on 16.09.2016. Petitioner has earlier approached this Court by way of filing petitions i.e. CRM-M-25820-2017 which was allowed to be withdrawn on 06.02.2018 and CRM-M-42708-2020 withdrawn on 25.10.2021. Thereafter, he approached the Court of learned Additional Sessions Judge, Tarn Taran praying for grant of bail. However, learned Additional Sessions Judge after hearing counsel for the parties, declined the same vide order dated 22.12.2022. Hence the petitioner has approached this Court by way of filing 3rd present petition.

Learned counsel for the petitioner has vehemently contended that petitioner is behind bars in the present case since the date of his arrest i.e. 16.09.2016. He has submitted that at the time of occurrence, petitioner was in custody in some other case. He has submitted that recovery of 12 kgs Heroin was effected from the co-accused namely Dilbagh Singh @ Bagha and Rajvir Singh @ Raju who were arrested on spot. It is a bare disclosure on the basis of which petitioner was involved in the present case. He submits that the case was foisted on the petitioner

and his brother and mother in a clandestine manner and recovery of another 6 kg of Heroin was shown to be effected from his home on his disclosure statement. It is submitted that as the petitioner is involved in other cases of similar nature, he was deliberately implicated in the present case by the police. He submits that both the co-accused who were arrested on spot and from whom recovery of 12 kg of Heroin was effected have been granted bail by this Court. Not only this, his brother Harpal Singh and mother Rajwant Kaur had already been granted bail by this Court. He submits that petitioner has completed custody of more than 06 years in the present case and till date prosecution has not been able to conclude the trial. He has vehemently argued before this Court that *dehors* the merits of the case, every accused has a fundamental right of speedy trial which is hopelessly defeated in the present case. He relies upon the judgment of the Hon'ble Supreme Court titled as **Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260** and has submitted that even if provisions of Section 37 of NDPS Act are applicable in the case of commercial quantity, petitioner deserves to be granted bail as per the law settled.

Learned State counsel, on the other hand, has opposed the submissions made by counsel for the petitioner. He, on instructions from ASI Sukhdev Singh, has submitted that petitioner is a habitual offender. He submits that though petitioner was in custody, however, his custody was taken on production warrant and he was taken to his home. He submits that on his disclosure, another 6 kgs of Heroin was recovered from his home. He further on instructions has submitted that co-accused have been granted bail by this Court. He has submitted that out of 23

prosecution witnesses till date, only 09 witnesses have been examined by the prosecution. He submits that the petitioner is facing prosecution in 07 other cases.

I have heard counsel for the parties and perused the record.

Evidently, petitioner is behind bars since 16.09.2016. At the time of occurrence, he was admittedly behind bars. His complicity in this case was found on the basis of disclosure statement made by the co-accused namely, Dilbagh Singh @ Bagha and Rajvir Singh @ Raju who were arrested on spot. On production warrant, petitioner was taken from the jail to his home and on his disclosure, recovery of 6 kg of Heroin was effected from his home. As submitted before this Court, all the co-accused in this case have already been granted bail by this Court. Needless to say that the petitioner has a right of speedy trial. Petitioner is behind bars since last more than 06 years and till date the prosecution has not been able to examine even half of the witnesses. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain's case (supra)**, this Court is of the opinion that the case of the petitioner is covered by the ratio 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.

21it 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.

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”²² (also see Donald Clemmer’s ‘The Prison Community’ published in 1940²³). 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.’

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 sufficiently long time. However, keeping in view the long custody of the petitioner and the bail having been granted to the co-accused, and also the observation made by Hon'ble Supreme Court in abovesaid case to the effect that 'grant of bail on ground of undue delay in

trial is not fettered by Section 37', this Court finds that the petitioner deserves to be granted bail. Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

24.04.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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