

**232 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-24589-2023****Date of decision : 18.05.2023****Rajan Kumar @ Rajan Kumar Bharti****.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ***********Present :- Mr. Jagjeet Beniwal, Advocate
for the petitioner.****Mr. Kirpal Singh Thakur, AAG, Haryana.***********RAJESH BHARDWAJ, J. (Oral)**

Petitioner has approached this Court by way of present fourth petition praying for grant of regular bail in case FIR No.0076 dated 14.04.2020, under Section 20 of NDPS Act, 1985 registered at Police Station Udyog Vihar, District Gurugram.

As per facts of the case, police party received a secret information that Rajan and Abhishek were involved in the business of carrying out drugs/ganja patti in front of plot No.1, Ground Floor, Nagaro Building, Gurugram and if the raid was conducted they could be apprehended with a heavy quantity of contraband. The information was sent to the higher officials provision of Section 42 of NDPS Act were complied with. The police party constituted the raiding team and they raided the place as informed by the secret informer. On raiding the place, they found two persons who disclosed their name as Rajan and Abhishek and in their presence, four plastic bags of ganja patti were recovered and on weighing all the four bags, total weight of the contraband recovered was found to be 107 kg of ganja. Both the accused namely, Rajan Kumar and Abhishek failed to

show any license for the possession of the contraband recovered from them and thus, the FIR was registered. Both the accused were arrested. However, Abhishek being the juvenile was released on bail. On registration of the FIR, investigation commenced. Samples were taken and sent to the FSL. Petitioner approached the Court of learned Additional Sessions Judge, Gurugram praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge declined the same vide order dated 27.11.2020. Thereafter, the petitioner has approached this Court by way of three petitions which were allowed to be dismissed as withdrawn and hence, this is the fourth petition filed by the petitioner praying for grant of regular bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in this case. He has submitted that the case of the prosecution is based on the receipt of secret information. However, the investigating agency did not comply with the provisions of Section 42 of the NDPS Act. He submits that the petitioner was working as a helper in the shop and he had no proximity with the place of recovery and thus, the conscious possession of the contraband recovered is also not true. He has also submitted that there is a clear violation of the provisions of Section 50 of NDPS Act as well. He has submitted that the petitioner is behind bars from last more than 03 years. Till date, the prosecution has not been able to conclude the trial. He submits that in all there are 04 accused, out of which, 03 accused are already on bail whereas, the petitioner is behind bars till date. He submits that the investigation is complete and charges are also framed and the petitioner is not involved in any other case. He submits that de hors the merits of the case, petitioner has a right of speedy trial which is totally denied in the case of the petitioner. He submits that in the facts and

circumstances of the case, petitioner deserves to be granted regular bail.

Learned State counsel, on the other hand, has submitted that the name of the petitioner was duly mentioned in the secret information and thus, on the raid conducted, recovery of 107 kg ganja patti was effected which is a heavy commercial quantity. He submits that on the receipt of secret information, provisions of Section 42 of NDPS Act were duly complied with and thus, there is no violation of Section 42 of NDPS Act. He submits that out of 18 prosecution witnesses, 08 witnesses already stand examined. He fairly submits that as per the instructions from ASI Sorab, petitioner is not involved in any other case except the present case.

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

Evidently, petitioner is behind bars since 15.04.2020. The raid was conducted on the basis of secret information and the recovery of 107 kg ganja was effected from the place. In all, there are 04 accused and rest 03 accused as stated before this Court are on bail. There is nothing on record to show that the petitioner is involved in any other case of the similar nature. As per case of prosecution, recovery effected is of commercial quantity, however, the Court cannot ignore the fact that the speedy trial is the fundamental right of every accused and as per statements made before this Court till date, the prosecution has been able to examine only 08 witnesses, out of 18 prosecution witnesses. 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 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.

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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.*

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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 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. 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. 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.

18.05.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No