

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

CRM-M-24924-2023

Date of Decision: 22.05.2023

Lal Singh @ Gagan

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Davinder Bir Singh, Advocate, for the petitioner.

Mr. Karunesh Kaushal, Assistant Advocate General, Punjab.

Rajesh Bhardwaj, J. (ORAL)

Prayer in the present petition is for the grant of regular bail to the petitioner in a case FIR No.42 dated 19.03.2020, registered under Sections 21, 25, 61, 85 of Narcotic Drugs & Psychotropic Substance Act, 1985 (Section 29 of NDPS Act and Section 473 IPC added lateron while presenting report under Section 173 Cr.P.C.), at Police Station City Jagraon, District Ludhiana Rural.

As per facts of the case, the police party while on patrolling received a secret information that Lal Singh @ Gagan son of Balwant Singh (petitioner) and Paramjit Singh @ Ajayson of Mohinder Singh are indulged in the business of selling heroin at large scale. If a raid was conducted, heavy quantity of heroin could be recovered from them. Finding the secret information reliable, ruka was sent for registration of FIR. Pursuant to the same, raid party was constituted and Naka was laid. Both the accused as informed came on a motorcycle. They were stopped and a bag being carried by them was seen. On the search of the same, 2 kgs of heroin and cash of Rs.3,12,000/- were recovered from the accused. Both the accused failed to produce any licence for carrying the contraband recovered and thus, they

were arrested on the spot. Samples were taken and sent to the FSL. The investigation was completed and the challan was presented. The petitioner approached the Court of learned Judge, Special Court, Ludhiana for grant of bail, however, the learned Court after hearing both the sides, dismissed the same vide its order dated 08.02.2021. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition for grant of bail.

It has been contended by learned counsel for the petitioner that the FIR was registered on the basis of the secret information, however, the Investigating Agency failed to comply with the mandatory provisions of Section 42 of NDPS Act. He further submits that alleged recovery has been effected from bag being carried by the accused. He submits that personal search of the accused was also conducted and there was no compliance of Section 50 of NDPS Act as well. He submits that recovery has been effected from a public place, however, the police party has not joined any independent witness and thus false implication of the petitioner is writ large. He submits that the petitioner is behind bars since 19.03.2020 and thus, he has completed incarceration of about 3 years 2 months. He has drawn the attention of this Court to the zimini orders passed by the learned Special Court whereby the learned Court time and again has issuedailable warrants for summoning the witnesses for their examination. He submits that the officials witnesses are intentionally avoiding their presence before the trial Court in order to prolong the incarceration of the petitioner. He submits that dehors the merits of the case, the petitioner has fundamental right for speedy trial, which is intentionally being defeated by the prosecution. He submits that in the overall facts and circumstances, the

petitioner deserves to be granted bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the FIR was registered on the receipt of secret information and the Investigating Agency has duly complied with the provisions of Sections 42 and 50 the NDPS Act. He submits that both the accused were arrested on the spot and recovery of heavy commercial quantity i.e. 2 kgs of heroin was effected from bag being carried by the accused. On instructions from ASI Balraj Singh, he has submitted that the petitioner is involved in one more case under the NDPS Act, which is for non-commercial quantity, however, he is on bail in that case. He further submits that out of total 28 prosecution witnesses, 6 witnesses have been examined so far.

Heard.

Evidently, the petitioner is behind bars since 19.03.2020 and thus has completed incarceration of more than three years. Out of total 28 prosecution witnesses, 6 witnesses have already been examined by the trial Court. The zimini orders produced before this Court would show that time and again the learned Special Court has been issuingailable warrants for securing the presence of the official witnesses. Needless to say that every accused has fundamental right for speedy trial. Hon'ble Supreme Court in Mohd Muslim @ Hussain Vs. State (NCT of Delhi), 2023 LiveLaw(SC)260 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.

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.

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 case of the petitioner is covered by the ratio of law laid down by Hon’ble Supreme Court in the above said case.

Veracity of the allegations would be evaluated by the trial Court only after appreciation of complete evidence to be led by both the parties before it. This Court would refrain itself from commenting anything on the merits of the case, however, considering the prayer for grant of bail to the petitioner, I am of the view that learned counsel for the petitioner has been able to make out a case for grant of regular bail to the petitioner. The

trial would take sufficiently long time for its conclusion.

Accordingly, the present petition is allowed and the petitioner is ordered to be released on bail 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.

22.05.2023

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No