



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

**CRM-M-2666-2024
Date of decision : 24.07.2024**

Gurmangat Singh @ Kala @ Sangha

.....Petitioner

versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. G.S. Bajwa, Advocate
for the petitioner.

Mr. J.S. Arora, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court by way of present petition praying for granting him regular bail in case FIR No.61 dated 23.07.2023, under Sections 21(c) of NDPS Act and Section 25 of Arms Act, registered at Police Station Sarai Amant Khan, District Tarn Taran.

Succinctly stated facts of the case are that when the police party was on patrolling, they stopped two persons coming on Hero Honda, Splendor Motorcycle. They were stopped by the police and on asking about the name, the driver of the motorcycle disclosed his name as Gurmangat Singh @ Kala @ Sangha whereas the pillion rider disclosed his name as Jarnail Singh @ Jaila. On suspicion, they were given offer to be searched. Thereafter, the search was carried out by the DSP and from the right pocket of Gurmangat Singh @ Kala @ Sangha (petitioner), 255 grams of heroin was recovered. He failed to produce any license regarding the same and thus, both the accused were arrested and FIR was registered. The samples were taken from the contraband and were sent to the FSL. Thereafter, petitioner approached the learned Additional Sessions Judge, Tarn Taran praying for grant of regular bail. However, on hearing both the sides, learned Additional



Sessions Judge, Tarn Taran declined the same vide order dated 23.11.2023. Hence, petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that petitioner was falsely implicated in this case. It is submitted that though search was conducted in the public place however, no independent witness from the public was joined by the police. He further submits that even otherwise, the alleged recovery shown from the petitioner is 255 grams of heroin whereas the commercial quantity is above 250 grams of heroin. He thus, submits that the recovery effected is marginally above the non-commercial quantity. He has submitted that the investigation in the present case is complete and the petitioner is not involved in any other case of the similar nature. It is submitted that in the facts and circumstances of the case, petitioner deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the contraband recovered from the petitioner falls under the category of commercial quantity. He submits that the recovery was effected from the person of the petitioner. He submits that out of 08 prosecution witnesses, only 01 witness has been examined so far. He further submits that quantity being commercial in nature, petitioner does not deserve to be granted regular bail.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner along with co-accused was arrested by the police on 23.07.2023. The recovery effected from the person of the petitioner was 255 grams of heroin which is marginally above the non-commercial quantity. As submitted before this Court, out of 08 prosecution witnesses, 01 witness has been examined. Learned State counsel has placed on record custody certificate of the petitioner which shows that the petitioner



has undergone incarceration of 11 months and 27 days as on 23.07.2024. Though the petitioner is involved in one more case but the same is under the Customs Act and thus, as per the custody certificate, petitioner is not involved in any other case under the NDPS Act.

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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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.

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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 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. 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. 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.

24.07.2024
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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