

THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.6680 of 2024
Date of Decision: 19.04.2024

Jaswinder Singh @ Monu

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Sukhwinder S. Dhillon, Advocate
for the petitioner.

Mr. Nirmal S. Diwana, Sr. DAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

Present second petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.191, dated 18.11.2021, under Sections 21-B, 22-C of NDPS Act, registered at Police Station Kotbhai, District Sri Muktsar Sahib.

Adumbrated facts of the case are that the police party while on duty on 18.11.2021 and present at Doda noticed one haircut person seen coming from the side of crematory ground holding one black coloured polythene in his hand. On seeing the police party, he got perplexed and on suspicion, he was nabbed by the police party. On asking, he told his name as Jaswinder Singh @ Monu. On the basis of suspicion he was given an offer for his search in the presence of Gazetted Officer, consent memo under Section 50 of NDPS Act was prepared for the search of the bag in his hand. Thereafter on conducting search of the

same, 1380 intoxicant tablets and 20 grams of heroin was recovered from the polythene bag being carried out by the petitioner, namely, Jaswinder Singh @ Monu. He failed to show any licence for possession of the same. Thus, the FIR was registered against him and he was arrested at the spot. On registration of the FIR, the investigation commenced. The petitioner approached the Court of Learned Additional Sessions Judge, Sri Muktsar Sahib for bail and the same was declined vide order dated 21.02.2022. The petitioner on the earlier occasion approached this Court by way of filing CRM-M-16092-2022, however, the same was allowed to be dismissed as not pressed vide order dated 13.03.2023. Hence, the petitioner has approached this Court again by way of filing the present second petition for grant of bail.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. He has submitted that as per the case of prosecution, the petitioner was arrested on suspicion of carrying the contraband in the polythene bag being carried out by him. He has submitted that the alleged recovery has been effected from the polythene bag being carried out by the petitioner in the public place, however no independent witness was joined from the public. He submits that the petitioner is behind bars from the last more than 02 years and till date, there is no substantial progress in the trial. He has submitted that recovery has been falsely planted upon the petitioner. He submits that there is no compliance of mandatory provisions of Section 50 of NDPS Act in the present case. He submits that though the petitioner was earlier falsely implicated in another case,

however he is on bail in the same. He submits that the petitioner was earlier granted the interim bail for the marriage of his sister and after availing the same, he duly surrendered back. He submits that in the facts and circumstances of the case, the petitioner deserves the grant of bail.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner was arrested on the spot and the recovery of contraband of 1380 intoxicant tablets and 20 grams of heroin was effected from him. He submits that the samples were taken on the spot and sent to FSL. He submits that as per the report of FSL, the Tramadol Hydrochloride and Diacetylmorphine was confirmed from the samples recovered from the petitioner. He submits that the petitioner is involved in other case bearing FIR No.58, dated 03.06.2020, under Section 22/61/85 of NDPS Act, however he is on bail in the same. He further submits that the petitioner is not entitled to be released on bail as the contraband recovered recovered falls under commercial quantity.

Heard.

On hearing learned counsel for the parties and perusing the record, it is apparent that the petitioner was arrested on 18.11.2021. The samples of contraband recovered from the petitioner was sent to the FSL. Custody certificate produced by the learned State counsel today in the Court would show that the petitioner has completed incarceration of about 02 years and 05 months. 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 04 witnesses, out of 17 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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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 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.

(RAJESH BHARDWAJ)
JUDGE

19.04.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No