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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9188-2024
Date of decision : 16.05.2024

Krishan Kumar
.....Petitioner

versus

U.T. Chandigarh
..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Arjun Dosanj, Advocate and Mr. Rahil Mahajan, Advocate
for the petitioner.

Mr. Anupam Bansal, Addl. P.P., U.T. Chandigarh for
Mr. Vipul Jindal, Addl. P.P., U.T. Chandigarh.

RAJESH BHARDWAJ, J. (Oral)

This is the third petition filed by the petitioner under Section 439 Cr.P.C. praying for grant of regular bail in case FIR No.95 dated 17.06.2022, under Section 22 of NDPS Act, 1985 registered at Police Station Sector-39, Chandigarh.

Adumbrated facts of the case are that the Police party while on patrolling reached near Circuit House Gate, where one Auto coming from the IMTECH campus, on seeing the police party, started moving backwards. On suspicion, it was stopped and then SI asked the driver about his name and address. He disclosed his name as Krishan Kumar S/o Om Parkash R/o 3227, Sector-38D, Chandigarh. The accused tried to throw away the white coloured polythene bag being carried by him in his right hand. The police party asked him to open the polythene bag and the same was searched. On searching the same, 11 Buprenorphine injections and 15 pentazocine locate injections i.e.

total 26 intoxicant injections were recovered from the same. The accused failed to produce any licence for having these intoxicants. He was apprehended and the FIR was registered against him. On the registration of FIR, samples were sent to the FSL and the petitioner was arrested. On completion of investigation, challan was presented. Thereafter, the petitioner approached the Ld. Special Court, Chandigarh for grant of bail, however, the same was declined by the Special Court, Chandgiarh vide its order dated 11.10.2022 (Annexure P-2). Aggrieved by the same, the petitioner approached this Court by way of filing of CRM-M-1248-2023 and CRM-M-27767-2023, and same were also dismissed as withdrawn on 16.01.2023 and 17.08.2023, respectively. Hence, petitioner is before this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. He submits that as per case of the prosecution, recovery was effected from the bag being carried by the petitioner. He submits that the alleged recovery of 26 intoxicant injections was made from the public place, however, no independent witness was joined by the police party. He submits that even from the CFSL report, it is apparent that Buprenorphine injections weighing about 21.98 grams has been recovered from the petitioner which falls under the commercial quantity, whereas the another injections i.e. Pentazocine falls under the small quantity. He submits that as per Schedule, the commercial quantity is above 20 grams and thus, the alleged recovery from the petitioner is marginally above the commercial quantity. He submits that there is violation of mandatory provision of Section 50 of the NDPS Act in effecting the recovery from the petitioner. He submits that on the earlier occasion, the prayer for bail was primarily opposed by the prosecution on the ground that he is already facing prosecution in another case FIR No.156 of 2019 under Section

20 of NDPS Act. However, the petitioner has been acquitted in the same by the Ld. Trial Court vide its order dated 23.02.2024. He submits that in the facts and circumstances of the present case, when the petitioner has already completed about two years of custody, he deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the recovery effected from the petitioner falls under the commercial quantity and as per Section 37 of the NDPS Act, he does not deserve the concession of regular bail. He submits that even though the petitioner has been acquitted in another case, however, his antecedents proves that he is a habitual offender. He submits that in all there are 16 prosecution witnesses, only 05 have been examined and 02 have been given up. The next date before the trial Court is 20.05.2024. He submits that in the overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 17.06.2022. The recovery was effected from a public place, wherein in all 26 injections were recovered from the petitioner, out of which 11 Buprenorphine injections weighing about 21.98 grams falls under the commercial quantity. Needless to say the commercial quantity is above 20 grams. Learned State counsel has produced the custody certificate of the petitioner on the record, which shows that the petitioner has been acquitted in another FIR No.156 of 2019.

In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. 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.

20. xxxxx

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.

22. xxxxx

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. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, 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 Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

16.05.2024
ps-I

(RAJESH BHARDWAJ)
JUDGE

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