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

CRM-M-10947-2024

Date of decision : 26.09.2024

Pammy**.....Petitioner****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. K.S. Virk, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana

RAJESH BHARDWAJ, J. (Oral)

1. 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.304 dated 16.08.2022, under Section 20(b)(ii)(c) of NDPS Act, 1985 (Section 27(a) & 29 of the NDPS Act added subsequently) registered at Police Station Badshahpur, District Gurugram.

2. Succinctly the facts of the case are that on 16.08.2022, the police received a secret information to the effect that one Pammy wife of Arun is involved in selling the intoxicant 'Ganja' and if the raid is conducted on the rooms, which are given on rent then the contraband can be recovered. On receiving the secret information, the raiding party was constituted and raid was conducted at the disclosed place. However, the woman was found on the street carrying a plastic bag. The secret informer informed that the woman going with the plastic bag in her hand is Pammy. She was stopped and on search of the plastic bag being carried



by her, *ganja* weighing 2 kg and 350 grams was recovered. Thereafter, she disclosed about the contraband kept in her room and the police party was taken to the same. On conducting the search at the place disclosed by the accused-Pammy, 47 kg 90 grams *ganja* was recovered. The petitioner failed to produce any licence for possession of the contraband and thus, the FIR was registered against her and she was arrested on the spot. The investigation commenced and samples were taken and sent to the Forensic Science Laboratory. Thereafter, the petitioner approached the Ld. Additional Sessions Judge, Gurugram for grant of bail, however, after hearing both the sides and finding no merit, the same was declined by the Learned Additional Sessions Judge, Gurugram vide order dated 13.03.2023. Aggrieved by the same, the petitioner earlier approached this Court by way of filing CRM-M-1029-2023 which was dismissed as withdrawn vide order dated 16.01.2023 and thereafter, the petitioner again approached this Court by way of filing of CRM-M-23392-2023 and the same was also dismissed as withdrawn vide order dated 23.08.2023. Hence, the petitioner is before this Court by way of filing of third petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He submits that there was no compliance of Section 42 of the NDPS Act as the case of the prosecution is based on the secret information received. He submits that the recovery has been shown in two parts, first the petitioner was carrying a plastic bag as well as, from the disclosed room. He submits that there are violation of the provisions of Section 50 of the NDPS Act as well. It is submitted that the raiding party has not joined any independent witness and thus, false implication of the petitioner is evident. He submits that the petitioner and her husband, both have been implicated in the



present case and she is behind bars since the date of her arrest. He submits that till date the prosecution has examined only 04 prosecution witnesses. He submits that the petitioner has no criminal antecedents. He submits that in all there are 06 accused out of which 04 are already on bail. He submits that in the facts and circumstances of the present case, she deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the contraband recovered from the petitioner falls under the category of commercial quantity and thus, provisions of Section 37 of NDPS Act are attracted in the present case. He submits that on due compliance of the provisions of Sections 42 and 50 of the NDPS Act, recovery had been effected and as per the FSL, the recovered contraband was found to be containing Ganja. He has produced the custody certificate and has submitted that as on date out of 29 prosecution witnesses only 04 witnesses have been examined.

5. Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 16.08.2022. In all there are 06 accused, out of which 04 are already on bail. The custody certificate produced would show that the petitioner is behind bars from last more than 03 years. Custody certificate further reveals that the petitioner has no criminal antecedents as she is not involved in any other case except the present case. Till date out of 29 prosecution witnesses, 04 witnesses have been examined.

6. 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.

7. 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 her 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.

26.09.2024
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(RAJESH BHARDWAJ)
JUDGE

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