



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

CRM-M-21937-2024

Date of decision : 24.07.2024

Gurmeet Singh @ Kaka

.....Petitioner

versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jasdeep Singh Saluja, 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 grant of regular bail in case FIR No.106 dated 23.07.2022, under Sections 22, 61 (Section 27 added later on) of NDPS Act, registered at Police Station Division No.3, Police Commissionerate, District Ludhiana, Punjab.

Succinctly, facts of the case are that the police party received a secret information that Gurmeet Singh @ Kaka and Arun Kumar son of late Sh. Som Nath are habitual of consuming and selling of intoxicants and if barricade is laid, they can be arrested with the contraband. Finding the information reliable, the police party carried out the necessary action and barricade was laid. Petitioner and the co-accused were arrested while coming on Aactiva and on their search, 2000 intoxicating tablets were recovered. They failed to produce any license regarding the possession of the same and thus, both were arrested. On registration of the FIR, investigation commenced and samples taken were sent to the FSL.

Petitioner approached the learned Judge, Special Court, Ludhiana praying



for grant of bail. However, the same was declined vide his order dated 17.01.2023. Thereafter, petitioner earlier approached this Court by way of filing CRM-M-6857-2023 however, the same was dismissed as withdrawn vide order dated 14.02.2023. Hence, petitioner is before this Court again by way of filing the second petition.

Learned counsel for the petitioner has submitted that petitioner has been falsely implicated in this case. He submits that the case of the prosecution is based on a secret information, however, the compliance of Section 42 of the NDPS Act is not made. He further submits that the recovery has been effected from the public place however, no independent witness has been joined. He further submits that there is a violation of Section 50 of the NDPS Act as well. He has also argued that the recovery effected is in contradiction to the evidence on record. He submits that learned JMIC, Ludhiana vide his order dated 23.07.2022 had directed the investigating agency to produce the call details. He submits that in the overall facts and circumstances of the case, it is apparent that petitioner has been falsely implicated in this case. He has submitted that petitioner is behind bars from last more than 02 years and the prosecution is intentionally delaying the trial by not examining its witnesses. It is submitted that though the petitioner was falsely implicated in one another case under the NDPS Act however, in that case, he has already undergone the sentence awarded for 10 days. He thus, submits that petitioner deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from Insp. Amritpal Sharma, has submitted that the contraband recovered from



the petitioner is of 2000 intoxicating tablets which weighed 244 grams and thus, the same falls under the commercial quantity and the provisions of Section 37 of NDPS Act are not attracted. He submits that petitioner is involved in another case under the NDPS Act as well though he has undergone the sentence however, he has been prosecuted in one more FIR for the offence under Section 379-B IPC and same is pending adjudication. He submits that out of 13 prosecution witnesses, only 03 witness have been examined as on date and thus, petitioner does not deserve the concession of regular bail.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that the FIR was registered on the basis of the secret information received. As per case of the prosecution, the contraband recovered from the accused-petitioner weighed 244 grams of Alphrazolam. Petitioner is behind bars from last more than 02 years. As submitted by counsel for the petitioner, last witness was examined in the month of October, 2023 and thereafter, no further witness has been examined till date. Learned State counsel has also affirmed the fact that only 03 witnesses out of 13 prosecution witnesses have been examined till date.

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 enactsec stringent provisions, are taken up and concluded speedily.'*

Needless to say that speedy trial is the right of every accused *de hors* the gravity of the offence. The submissions made by counsel for the petitioner regarding the contradiction as pointed out, is the subject matter of the trial Court and the Court would refrain itself from

commenting anything on the merits of the case.

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. 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.

24.07.2024
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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