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

CRM-M-23044-2024 (O&M)

Date of decision : 05.11.2024

Binder Singh

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Yashpal Thakur, Advocate
for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)**CRM-20282-2024**

Allowed as prayed for.

CRM-M-23044-2024

1. Present petition has been filed by the petitioner under Section 439 Cr.P.C. praying for grant of regular bail in case FIR No.57 dated 08.04.2023, under Sections 15/25/29/61/85 of NDPS Act, 1985 registered at Police Station Sirhind, District Fatehgarh Sahib.

2. Succinctly the facts of the case are that on 08.04.2023 the Police party received a secret information at about 11:20 PM to the effect that Daljit Singh @ Guddu and Binder Singh (present petitioner) were indulged in sale of poppy husk. It was informed that they were coming in their truck bearing No.PB-23M-8983 from Patiala to Sirhind side and if nakka is laid, they can be arrested along with the contraband. On finding the information reliable, FIR was registered and the police party led the barricade. Thereafter, on the information by secret informer, the truck



informed was stopped and both the accused were found travelling in the same. On asking they disclosed their name as Daljit Singh @ Guddu S/o Baldev Singh and Binder Singh S/o Surjeet Singh. On the search of the truck, 21 bags of poppy husk were recovered weighing total 350 kg of poppy husk. They failed to produce any licence for possession of the contraband and thus, they were arrested on the spot. Samples were taken and sent to the Forensic Science Laboratory. On completion of the investigation, challan was presented, charges framed and trial commenced. Thereafter, the petitioner approached the Ld. Judge, Special Court, Fatehgarh Sahib for grant of bail, however, after hearing both the sides, the same was declined by the Judge, Special Court, Fatehgarh vide order dated 23.11.2023. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been vehemently contended by counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the recovery was effected from the petitioner at a public place, however, no independent witness from the public was joined by the police party. He submits that the prosecution is based upon the secret information, however, there is a gross violation of the mandatory provisions of Section 42 of the NDPS Act in the present case. He submits that the secret information was received at about 11:20 PM whereas the ruqa was sent at about 11:55 PM. He submits that there is violation of mandatory provisions of Section 50 of the NDPS Act as well. He submits that the petitioner is behind bars since the date of his arrest. He submits that allegedly 17 bags of poppy husk were recovered, however, the samples were not taken from all the bags recovered and thus, the samples sent to the Laboratory were also in violation of provisions of the Act. He



submits that the petitioner has no criminal antecedents as he has never been involved in any other case for the offence under the NDPS Act. He submits that the prosecution has examined only 01 witness till date and thus, the right of speedy trial of the petitioner has also been defeated. He submits that in the facts and circumstances of the present case, he deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that on receiving the secret information, the compliance of Section 42 of NDPS Act was done and thereafter the nakka was led. During the search of the truck, the contraband was recovered which amounts to the commercial quantity. He submits that as per the FSL report, the quantity recovered from the petitioner is of commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted in the present case. He submits that out of 19 witnesses only 02 witnesses have been examined as on date. He submits that as per instructions, the petitioner is not involved in any other case. He submits that in the overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

5. Heard. On hearing counsel for the parties and perusing the record, it is deciphered that the FIR was registered on the basis of secret information and 21 bags were recovered and total weighing 350 kgs contraband was recovered. As per the submission made by learned State counsel, the petitioner is not involved in any other case and out of 19 total cited witnesses, only 02 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 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.

05.11.2024
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(RAJESH BHARDWAJ)
JUDGE

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