



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

CRM-M-26274-2024

Date of decision : 05.11.2024

Sandeep Kumar

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ashok Kumar Khunger, Advocate for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

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.0114 dated 30.10.2023, under Sections 22 & 29 of NDPS Act, 1985 registered at Police Station City-II, Abohar, District Fazilka.
2. Succinctly the facts of the case are that on 30.10.2023 the Police party while on patrolling spotted a clean shaved youth carrying a polythene bag was coming. On suspicion he was asked for the search of bag. On conducting the search of the bag, the police recovered 145 strips each strip having 10/10 tablets i.e. total 1450 tablets make TRIDOL 100 (Tramadol Hydrochloride). The said person disclosed his name as Sandeep Kumar. He failed to produce any licence for possession of the same and thus, the FIR was registered and he was arrested on the spot. The samples were taken and sent to the Forensic Science Laboratory. The alleged 'Tramadol Hydrochloride' salt was found to be weighing 292.90 grams. On receiving the FSL report, challan was presented and on framing of charge, the trial commenced. Thereafter, the petitioner approached the Ld. Judge, Special Court, Fazilka for grant of bail, however, after hearing



both the sides, the same was declined by the Judge, Special Court, Fazilka vide order dated 02.05.2024. 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 as per the case of the prosecution, the search of the bag being allegedly carried by the petitioner was conducted. He submits that the recovery was effected from the petitioner at a public place, however, no independent witness from the public was joined. He submits that there is violation of mandatory provisions of Section 50 of the NDPS Act as well. He submits that the petitioner has no criminal antecedents and thus, false allegation is writ large. He submits that the petitioner is behind bars since the date of his arrest and till date the prosecution has not been able to conclude the trial. 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 though the police tried to join the independent witnesses, however, no one was ready, hence the search of the bag was made and on conducting the search of the bag 145 strips of Tridol-100 SR total 1450 tablets containing salt 'Tramadol Hydrochloride' were recovered. It is submitted that 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 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 from the facts of the case that the recovery from



the petitioner was made from a public place, wherein 1450 tablets of Tramadol Hydrochloride were recovered. As per the FSL report, the salt weighs 292.90 grams, whereas as per the provisions of the Act, the quantity weighing above 250 grams falls under the category of commercial quantity. As submitted before this Court, the petitioner is not involved in any other case of similarly situated nature. The petitioner is behind bars since the date of his arrest and till date out of 10 cited witnesses, only 03 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.

(RAJESH BHARDWAJ)
JUDGE

05.11.2024
ps-I

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