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

CRM-M-30654-2024

Date of decision : 03.10.2024

Sonu @ Sonu Kumar**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Fatehjeet Singh, Advocate with
Mr. Onkar Singh Wahla, 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.70 dated 20.07.2023, under Section 22 of NDPS Act, 1985 registered at Police Station Division No.5, District Jalandhar Commissionerate Punjab.

2. Succinctly the facts of the case are that on 20.07.2023 the Police party while on patrolling spotted a young person coming with a plastic bag in his right hand. On seeing the police party, he got perplexed and started turning back but he was overpowered by the police officials. On asking he disclosed his name as Sonu S/o Satpal. On suspicion he was given the notice under Section 50 of the NDPS Act, for the search of his bag. Thereafter the search was carried out and 1020 intoxicant tablets were recovered from the same. The petitioner failed to produce any licence for possession of these intoxicants tablets and thus, the FIR was



registered against him and he was arrested on the spot. Thus, the investigation commenced. Samples were sent to the Forensic Science Laboratory. Thereafter, the petitioner approached the Ld. Judge, Special Court, Jalandhar for grant of bail, however, after hearing both the sides, the same was declined by the Judge, Special Court, Jalandhar vide order dated 03.04.2024. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been 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 in a public place, however, no independent witness from the public was joined by the police party. He submits that there is a gross violation of Section 50 of the NDPS Act in the present case. He submits that even otherwise as per the case of the prosecution, the contraband recovered from the petitioner is marginally above the non-commercial quantity. It is submitted that the samples taken were also sent to the FSL after an unexplained delay of 07 days. 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 investigation is already complete and charges have been framed. However, no witness has been examined by the prosecution and thus, 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 the petitioner was arrested on the spot and the recovered contraband as per the FSL report weighs 113 grams of Alprazolam which falls under the commercial quantity. He further contends that quantity of contraband



recovered from the petitioner is commercial and as such 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 that the petitioner was arrested on 20.07.2023. The alleged contraband as per the FSL report was found to be 113 grams of Alprazolam and the quantity above 100 grams falls under the commercial quantity. As per the information, the charges are already framed, however, out of total 09 prosecution witnesses, none has been examined so far. It has been submitted before this Court that the petitioner is not involved in any other case under the NDPS Act.

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.

03.10.2024
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(RAJESH BHARDWAJ)
JUDGE

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