



CRM-M-30975-2024

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

CRM-M-30975-2024

Date of Decision: 23.09.2024

Gurvinder Singh @ Bagga

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.

Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present petition praying for granting him regular bail in case FIR No.111 dated 27.07.2023, under Sections 15 & 29 of NDPS Act 1985 registered at Police Station Doraha, Police District Khanna, District Ludhiana.

2. Succinctly stated facts of the case are that on 27.07.2023, Police party while on patrolling spotted a cruze car coming from side of Khanna. The driver of the car on seeing the police, tried to reverse the car, however, the same was stopped. Two cropped hair young persons were found to be travelling in the car and on asking, the driver of the vehicle disclosed his name as Gurwinder Singh (petitioner) and the person sitting on the conductor's seat disclosed his name as Jaswinder Singh @ Lallu. On suspicion, the car was searched and 10 bags each weighing 17 kgs of poppyhusk total 170 kgs of poppyhusk, were recovered from the same. Both the inmates failed to produce any licence regarding the possession of the same and thus, the FIR was registered and both were arrested on the spot.

The investigation commenced and samples taken were sent to the FSL. The



petitioner approached the Court of learned Judge, Special Court, Ludhiana praying for grant of regular bail, however, on hearing both the sides, learned Court declined the same vide order dated 25.04.2024. Hence, the petitioner is before this Court by way of filing the present petition praying for grant of regular bail.

3. It has been contended by counsel for the petitioner that petitioner was falsely implicated in this case. It is submitted that recovered contraband though falls under the category of commercial quantity, however, there is no compliance of the statutory provisions of the NDPS Act as there is violation of Sections 50 and 52-A of the NDPS, Act. He submits that alleged recovery has been effected from a public place, however, no independent witness has been joined in the same. He submits that the petitioner has no criminal antecedent as he has never been involved in any other criminal case. It is submitted that the petitioner is behind the bars since the date of his arrest and till date there is no progress in the trial. He thus, submits that in these circumstances, the petitioner deserves to be granted bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that heavy commercial quantity has been recovered from the petitioner and co-accused and thus, provisions of Section 37 of the NDPS Act are attracted in the present case. He submits that both petitioner and co-accused were arrested on the spot. He submits that there is no violation of provisions of Sections 50 and 52-A of the NDPS, Act. He submits that on filing the challan, charges were framed, however, out of 15 prosecution witnesses, none has been examined so far.



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He has produced on record the custody certificate of the petitioner and has submitted that the petitioner is behind bars from the last more than one year.

5. Heard.

6. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind the bars since 27.07.2023. Recovery of 170 Kgs of poppyhusk was effected from the petitioner and the co-accused. There is no denial to the fact that provisions of Section 37 of the NDPS are attracted in the present the present case. However, speedy trial is the fundamental right of every accused. Challan is presented and charges are framed. However, out of total 15 prosecution witnesses, no witness has been examined as on date. Admittedly, the petitioner has no criminal antecedent as reflected from the custody certificate.

7. 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

21it 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.'

8. 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. This Court would refrain itself from commenting anything on the merits of the case. The trial of the case will take sufficient 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 to the petitioner.

9. 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.

23.09.2024

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned :

Whether Reportable :

Yes/No

Yes/No