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

CRM-M-31408-2024

Date of decision : 26.09.2024

Vishal

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Sumit Dua, 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.23 dated 27.02.2023, under Section 21/22/61/85 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Basti Bawa Khel, District Jalandhar.

2. The facts of the case are that on 27.02.2023, the police party while on patrolling spotted a Hindu person coming on foot from the Leather Complex. He was signaled to stop and on suspicion, he was asked his name. He disclosed his name as Vishal son of Banwari Lal. The ASI on apprehension gave him an offer to be searched as he was suspected to be carrying some contraband. On posing faith in the ASI, his personal search was carried and 06 grams heroin was recovered from his pocket. Thereafter, from the envelope kept in other pocket, 265 grams of intoxicant powder was recovered. The petitioner failed to produce any



licence for possession of the contraband and thus, the FIR was registered against him and he was arrested on the spot. The investigation commenced and samples were taken and 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 and finding no merit, the same was declined by the Learned Judge, Special Court, Jalandhar vide order dated 08.12.2023. Aggrieved by the same, the petitioner is before this Court by way of filing of present petition.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He submits that admittedly the case of the prosecution is that the personal search of the petitioner was carried in a public place. He submits that the search was carried out by the ASI only and not before any Gazetted Officer. He thus, submits that there is gross violation of Section 50 of the NDPS Act. He further submits that search was carried out in a public place, however, no independent witness was joined. It is submitted that the petitioner is behind bars since the date of his arrest. He submits that though the charges are framed, however, no witness has been examined by the prosecution before the trial Court. He submits that the petitioner is thus, being incarcerated in a false case, where the prosecution is prolonging the trial only in order to prolong his incarceration. 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, on instructions from ASI Tehal Dass, has submitted that the petitioner was given an offer under



Section 50 of the NDPS Act for his search. The contraband recovered i.e. 265 grams was found to be Alprazolam from the FSL report, which falls under the commercial quantity. He thus, submits that the provisions of Section 37 of NDPS Act are attracted in the present case. He further submits that the petitioner is involved in 02 other cases under the NDPS Act and in one of the case, he has been convicted as well. He submits that in all there are 09 prosecution witnesses and none has been examined till date.

5. Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 27.02.2023. The contraband recovered i.e. 06 grams of heroin and 265 grams of Alprazolam, is from the person of the petitioner-accused. No independent witness was joined as submitted before this Court during his search. Out of total 09 prosecution witnesses, none has been examined till date.

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.

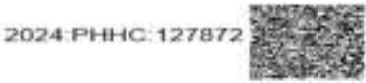
20. xxxxx

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.

26.09.2024
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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No