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

CRM-M-31626-2024

Date of Decision: 16.10.2024

Gurbhej @ Bheja

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gurjinder Singh, 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.53 dated 03.07.2023, under Sections 21(c), 29 of NDPS Act 1985 registered at Police Station Chohla Sahib, District Tarn Taran.

2. Succinctly stated facts of the case are that on 03.07.2023, Police party received a secret information that Gurbhej Singh @ Bheja (petitioner) is involved in the business of selling and purchasing of heroin. It was informed that he is coming from the National Highway to Link Road via Gangiwind village Rurhiwala and in case of barricading, he could be arrested alongwith the contraband. On finding the secret information reliable, FIR was registered and barricading was made. On checking, the petitioner was apprehended and on the search 290 grams of heroin was recovered from his possession. He failed to produce any licence for the possession of the same. Hence, he was arrested on the spot and the investigation commenced. Samples taken were sent to the FSL. The petitioner approached the Court of learned Judge, Special Court praying for



grant of regular bail, however, on hearing both the sides, learned Court declined the same vide order dated 28.02.2024. 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 evidently the case of the prosecution is based on a secret information, however, there is a gross violation of mandatory provisions of Section 42 of NDPS Act. It is further submitted that there is no compliance of Section 50 of the NDPS Act as well. He submits that recovery was effected from a public place, however, no independent witness was joined by the Police. It is submitted that in the facts and circumstances of the case, false implication of the petitioner is writ large. He further submits that though the petitioner has been falsely implicated in two other cases, however, he is on bail in the same. It has been submitted that the petitioner is behind the bars since 03.07.2023 in the present case and till date the prosecution has not examined even half of the witnesses, hence, the trial is intentionally delayed just to prolong the incarceration of the petitioner.

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 basis of the secret information in compliance of the statutory provisions of the NDPS Act. He submits that recovery made from the petitioner is 290 grams of heroin, which is commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted in the present case.

He submits that the petitioner is involved in two more cases under the NDPS



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Act. On instructions, he further submits that out of total 15 prosecution witnesses, only 01 witness has been examined so far.

5. Heard.

6. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner was arrested on the basis of the secret information on 03.07.2023, wherein, 290 grams of heroin was recovered from him. Though he has been prosecuted in two other cases, however, as submitted before this Court, he is on bail in the same. Though charges have been framed, however, only 01 prosecution witness has been examined out of total 15 witnesses.

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.

10. It is being clarified that in case the petitioner does not furnish

bail/surety bonds in the present case within a period of one week from today,
his custody will not be counted in the present case after one week.

16.10.2024		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No