

CRM-M-33209-2023

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

CRM-M-33209-2023

Date of Decision: 22.08.2024

Harpal Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

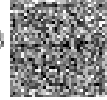
CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ranjodh Singh Sidhu, Advocate for the petitioner.
Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

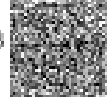
1. Petitioner has approached this Court by way of present third petition praying for granting him regular bail in case FIR No.181 dated 17.07.2021, under Section 21 (C) of NDPS Act, 1985, registered at Police Station City Tarn Taran, District Tarn Taran.

2. Succinctly facts of the case are that on 17.07.2021, the Police party received a secret information regarding one youth who was coming from the side of Jarmasatpura on foot and he was having intoxicating substance in his possession. It was informed that if raid is conducted, he could be arrested and intoxicating substance could be recovered from him. On finding the secret information reliable, the Police party raided the place and a person was stopped. On seeing the Police party, the person got nervous and took out a heavy polythene bag from his right pocket and threw it on the roadside and tried to flee. However, he was apprehended by the Police party. On asking, he disclosed his name as Harpal Singh (petitioner). On suspicion, notice under Section 50 of the NDPS Act was given for search of the



polythene bag and thereafter, the search was conducted. 274 grams of heroin was recovered from the polythene bag thrown by the accused. The petitioner failed to produce any licence for the possession of the same and thus, FIR was registered and he was arrested on spot. On registration of the FIR, the investigation commenced. Samples were taken and sent to the FSL. The petitioner approached before the Court of learned Judge Special Judge, Tarn Taran, for grant of regular bail, who after hearing both the sides, declined the same vide order dated 21.09.2021. Thereafter the petitioner approached before this Court twice praying for grant of regular bail by way of filing CRM-M-51291-2021 and CRM-M-35196-2022, however, both were dismissed on merits vide orders dated 25.02.2022 and 02.02.2023, respectively. Hence, the petitioner has approached this Court by way of filing the present third petition for grant of regular bail.

3. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in the present case. He submits that as per the case of the prosecution, the alleged recovery was effected in a public place, however, no independent witness was joined. He submits that the petitioner was apprehended on the basis of the secret information and there is violation of provisions of Section 42 of NDPS Act. He submits that no offer as per the mandate of Section 50 of the NDPS Act was given and thus, there is violation of mandatory provisions of Section 50 of the NDPS Act as well. He further submits that petitioner has no criminal antecedent as he has never been involved in any other case of similar nature. It is submitted that as the petitioner suffered incarceration of more than three years, in these



circumstances, he deserves to be granted regular bail.

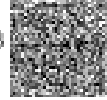
4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the petitioner was arrested on spot on the basis of the secret information and there was no violation of Sections 42 and 50 of the NDPS Act in the present case. He submits that all the prosecution witnesses have also been examined. He submits that the recovery effected from the petitioner falls under the commercial quantity, thus, provisions of Section 37 of the NDPS Act are attracted in this case. However, on instructions he submits that the petitioner is not involved in any other case of similar nature.

5. Heard.

6. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars from the last more than three years. All the prosecution witnesses have been examined. It is apparent from the record that the petitioner is not a habitual offender as he has no criminal antecedent. The custody of the petitioner itself is more than three years.s

7. Taking into consideration the observation of 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.

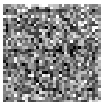
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21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

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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.

22.08.2024		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No