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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-32168-2024
Date of decision : 30.07.2024

Jodhvir Singh @ JodhaPetitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ashok Giri, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court by way of present petition praying for grant of regular bail in case FIR No.47 dated 22.04.2024, under Section 25 of Arms Act, 1959; Section 21(b) of NDPS Act, 1985 (Section 27 of Arms Act and Section 27-A of NDPS Act added later on vide DDR No.24 dated 23.04.2024), registered at Police Station Nakodar Sadar, District Jalandhar Rural.

Succinctly, as per the facts of the case, the police party had laid nakabandi in connection with checking of the suspected persons and they stopped a white colour car on which three persons were travelling. On asking their name, they disclosed their name as Balwinder Singh, Salinder Singh and Jodhvir Singh @ Jodha (petitioner). Suspecting them to be carrying some objectionable material, their search was conducted and a sharp edged khanda was recovered from Jodhvir Singh @ Jodha. On searching the car underneath the foot-mat, a bag containing heroin was recovered. On



weighing, the same was found to be 61 grams. The abovesaid persons failed to produce any license regarding possession of the same and thus, the FIR was registered and they were arrested. Thereafter, petitioner approached the Court of learned Judge, Special Court, Jalandhar praying for grant of bail. However, on hearing counsel for the parties and perusing the record, learned Judge, Special Court, allowed the same vide order dated 28.05.2024. However, later on, learned Judge declined his bail vide order dated 19.06.2024 on the ground that serious offences under Sections 27-A of NDPS Act and Section 27 of Arms Act were added. Hence, being aggrieved, petitioner is before this Court praying for grant of regular bail.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in this case. He submits that recovery has been allegedly made from the public place where the car was stopped on which the petitioner along with his two accomplice was allegedly travelling. He submits that no independent witness has been joined at the time of effecting recovery and thus, recovery made from the petitioner is totally unbelievable. He submits that even otherwise, the contraband recovered was not from the personal search of the petitioner but it was found lying under the foot-rest mat. He submits that on weighing the contraband, the same was found to be 61 grams which is even otherwise, a non-commercial quantity and provisions of Section 37 of NDPS Act are not attracted. He submits that petition for grant of bail was allowed by the learned Special Court vide order dated 28.05.2024 however on the very next date, the investigating agency deliberately added offence under Section 27-A NDPS Act and Section 27 of Arms Act and thus, the same was rejected by the learned Additional Sessions Judge, Jalandhar vide order dated 19.06.2024. He submits that though the petitioner has been falsely implicated in another 01 case however, he is



already on bail in that case. He submits that in the facts and circumstances of the case, petitioner deserves to be granted bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from SI Rampal Pairvi, Jalandhar Rural, submits that all the three accused were arrested on the spot along with weapons and the contraband was also recovered from the car they were travelling. He submits that though the recovery effected is non-commercial quantity however, petitioner is involved in 01 more case for the offence under Section 307 IPC. He submits that the investigation is complete and challan has been presented however, the charges are yet to be framed.

On hearing counsel for the parties and perusing the record, it is apparent that petitioner was arrested on 22.04.2024. On conducting the personal search, recovery of sharp edged khanda was effected from the petitioner and from the car 61 grams of heroin was recovered which is non-commercial quantity and thus, provisions of Section 37 of NDPS Act are not attracted. Though the petitioner is involved in 01 more case however, he is on bail in that case. The investigation already stands completed, challan is presented.

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.

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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.'*

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 sufficiently 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. 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.

30.07.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No