

209

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36875-2023
Date of decision : 15.05.2024

Avinash Kumar @ Chau
.....Petitioner

versus

State of Punjab
..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Suneel Sharma, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

This is the second petition filed by the petitioner praying for grant of regular bail in case FIR No.104 dated 05.07.2022, under Sections 22 and 61 of NDPS Act, 1985 registered at Police Station Division 4, Lohari Gate, District Patiala.

Adumbrated facts of the case are that the Police party while on patrolling reached near Safabadi Gate near Gurudwara Jhall Sahib, they noticed a young man coming by holding a polythene bag in his hand. On seeing the police party, he got perplexed and tried to escape. However, he was nabbed by the police party and on asking, he disclosed his name as Avinash Kumar @ Chau. On suspicion, he was asked to get his bag searched and on searching the same, intoxicant tablets were recovered from the same. The accused failed to produce any licence for having these tablets and thus, the FIR was registered against him. On the registration of FIR, samples were sent to the FSL and the report was received from FSL on 14.09.2023. Investigation

commenced and concluded. The challan was presented on 20.01.2024. The

petitioner approached the Ld. Special Court, Patiala for grant of bail, however, the same was declined by the Special Court, Patiala vide its order dated 23.12.2022 (Annexure P-2). Aggrieved by the same, the petitioner approached this Court by way of filing of CRM-M-14039-2023 and the same was also dismissed as withdrawn on 24.03.2023. Hence, petitioner is before this Court by way of filing the present petition.

It has been contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. He further submits that as per case of the prosecution, recovery was effected from the bag being carried by the petitioner. He submits that the alleged recovery has been made from the a public place, however, no independent witness has been joined while recovering the same. Besides this, mandatory provision of Section 50 of the NDPS Act has not been complied with. He submits that the petitioner has no criminal antecedents as he was never involved in any such case. It is submitted that the petitioner is behind the bars from last two years. He submits that the prosecution is intentionally delaying the trial as there is no material progress in the trial and thus, the incarceration of the petitioner is being prolonged for no fault of him. In such circumstances, the petitioner deserves to be granted regular bail.

Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that search of the petitioner was carried out as per provision of the Act and on searching the bag 1290 intoxicant tablets were recovered. The petitioner failed to produce any licence for possession of the same. He submits that sample was sent to the FSL and total weight of the intoxicant tablets recovered from the petitioner, was amounting to 527 gram of Tramadol Hydrochloride, which falls under the category of commercial quantity. He has placed on record custody certificate of the petitioner and has submitted that out of 13 only 02

prosecution witnesses have been examined so far. He submits that in the overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 05.07.2022 and recovery of 1290 intoxicant tablets were effected from him. As per the FSL report the weight of the contraband was found to be 527 grams of Tramadol Hydrochloride. Though the recovery effected from the petitioner is commercial in nature, however, the custody certificate shows that the petitioner has completed an actual custody of 01 year, 10 months and 07 days as on 14.05.2024. It further reflect that the petitioner is not involved in any other case of the similar nature. However, there is one more FIR against the petitioner which is under Section 52-A of the Prison Act.

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 and as per statements made before this Court till date, the prosecution has been able to examine only 02 witnesses, out of 13 prosecution witnesses. 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.*

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.

15.05.2024
ps-I

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No