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

CRM-M-38771-2024 (O&M)

Date of decision : 23.08.2024

Sukhbir Singh @ Booti

.....Petitioner

versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ankur Jain, Advocate
for the petitioner.

Mr. J.S. Arora, DAG, Punjab with
ASI Narinder Singh.

RAJESH BHARDWAJ, J. (Oral)CRM-33543-2024

Application is allowed as prayed for.

Correct copy of the FIR is placed on record.

Main case

1. Petitioner has approached this Court by way of present petition praying for granting him regular bail in case FIR No.61 dated 23.07.2023, under Sections 21(C)/29/61/85 of NDPS Act and Sections 25/54/59 of Arms Act, registered at Police Station Sarai Amant Khan, District Tarn Taran.
2. Succinctly stated facts of the case are that when the police party was on patrolling, they stopped two persons coming on Hero Honda, Splendor Motorcycle. They were stopped by the police and on asking



about the name, the driver of the motorcycle disclosed his name as Gurmangat Singh @ Kala @ Sanga whereas the pillion rider disclosed his name as Jarnail Singh @ Jailla. On suspicion, they were given offer to be searched. Thereafter, the search was carried out by the DSP and from the right pocket of Gurmangat Singh @ Kala @ Sanga, 255 grams of heroin was recovered. He failed to produce any license regarding the same and thus, both the accused were arrested and FIR was registered. The samples were taken from the contraband and were sent to the FSL. Thereafter, petitioner approached the learned Additional Sessions Judge, Tarn Taran praying for grant of regular bail. However, on hearing both the sides, learned Additional Sessions Judge, Tarn Taran declined the same vide order dated 04.06.2024. Hence, petitioner is before this Court 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 though search was conducted in the public place however, no independent witness from the public was joined by the police. He further submits that even otherwise, the alleged recovery shown from the co-accused, is 255 grams of heroin and the commercial quantity is above 250 grams of heroin. He thus, submits that the recovery effected is marginally above the noncommercial quantity. He further submits that co-accused Gurmangat Singh @ Kala @ Sanga, from whom the alleged contraband was recovered, has been granted regular bail by this Court vide order dated 24.07.2024 and also co-accused Jarnail Singh @ Jailla has also been granted regular bail by this Court vide order dated 07.08.2024. He has



submitted that the investigation in the present case is complete and now the case is fixed for examination of the witnesses. It is submitted that in the facts and circumstances of the case, petitioner 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 contraband recovered from the co-accused falls under the category of commercial quantity. However, he acknowledges that the co-accused have been granted bail by this Court vide order dated 24.07.2024 and 07.08.2024. He submits that out of 08 prosecution witnesses, only 01 witness has been examined so far. On instructions from ASI Narinder Singh, he submits that the petitioner is involved in two more cases under the NDPS Act however, he is on bail in those cases. He further submits that quantity being commercial in nature, petitioner does not deserve to be granted regular bail.

5. Heard

6. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner along with co-accused was arrested by the police on 06.10.2023. The recovery effected from the co-accused was 255 grams of heroin which is marginally above the noncommercial quantity. Admittedly the co-accused of petitioner namely, Gurmangat Singh @ Kala @ Sanga and Jarnail Singh @ Jailla have already been released on bail by this Court vide order dated 24.07.2024 and 07.08.2024 respectively. As submitted before this Court, out of 08 prosecution witnesses, 01 witness has been examined. Speedy trial is the fundamental right of every accused.



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.

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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

10. It is being clarified that in case the petitioner does not furnish bail/surety bonds within a period of one week from today, his custody will not be counted in the present case after one week .

23.08.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No