



212

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

CRM-M-43395-2023

Date of decision : 05.09.2024

Jatinder Singh @ Gobind**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Arshdeep Singh Brar, Advocate
for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner under Section 439 Cr.P.C. praying for grant of regular bail in case FIR No.173 dated 28.11.2022, under Section 22 of NDPS Act, 1985 registered at Police Station Kot Ise Khan, District Moga.

2. Succinctly the facts of the case are that on 28.11.2022 the Police party while on patrolling spotted white colour Scorpio vehicle which was coming from the Moga side. It was signaled to be stopped, however, on seeing the police party, the driver of the vehicle got perplexed and he threw a white coloured transparent bag out of the car, out of which some of the tablets got scattered out of the bag. He was apprehended by the police party and on asking he disclosed his name as Jatinder Singh @ Gobind S/o Balvir Singh. On suspicion, search of the bag was conducted from which 210 intoxicating tablets were recovered. The petitioner failed to produce any licence for possession of these intoxicants and thus, the



FIR was registered against him and he was arrested on the spot. Samples were sent to the Forensic Science Laboratory. On completion of the investigation, challan was presented. Thereafter, the petitioner approached the Ld. Judge, Special Court-Cum-Vacation Judge, Moga for grant of bail, however, after hearing both the sides, the same was declined by the Judge, Special Court-Cum-Vacation Judge, Moga vide order dated 09.06.2023. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been contended by counsel for the petitioner that the petitioner has been clandestinely implicated in the present case. He submits that as per case of the prosecution, the petitioner was arrested when he was travelling in Scorpio, thus, the recovery was effected from the petitioner in a public place, however, no independent witness from the public was joined by the police party. It is submitted that the father of the mother-in-law of the petitioner, namely, Virsa Singh, had lodged a complaint against the Police officials namely, HC Nachattar Singh, ASI Charanjit Singh and one lady Constable, bearing G.D. No.27 dated 23.11.2020. He submits that because of the same, the petitioner and his family members are being harassed by the police since then. He submits that even otherwise the petitioner is behind bars since 28.11.2022 and till date the prosecution could not conclude the trial. It is submitted that the petitioner was earlier falsely implicated in two other cases under the NDPS Act, however, he is on bail in both the cases. He submits that in the facts and circumstances of the present case, he deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He has submitted that the



petitioner was arrested from the spot and the recovery was effected at the compliance of the statutory provisions of the Act. It is submitted that the petitioner is involved in two other cases of the same nature. He submits that out of 14 witnesses only 02 witnesses have been examined till date. He, thus submitted that the contraband recovered from the petitioner falls under the category of commercial quantity. He further contends that such provisions of Section 37 of NDPS Act are attracted in the present case. He submits that in the overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

5. Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is behind bars since 28.11.2022. The recovery from the petitioner was effected from a public place. As has been submitted by the learned counsel for the petitioner, no independent witness was joined by the Investigating Agency. The motive and other contentions as alleged by learned counsel for the petitioner basically lies in the domain of the trial Court to be appreciated at the relevant stage on the basis of the evidence led by the parties. However, it is apparent that the petitioner is behind bars from the last 2 ½ years and till date only 02 witnesses have been examined.

6. 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. 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:-



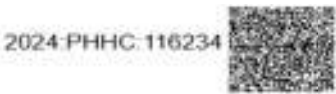
19. *A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as 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.*



7. 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.

05.09.2024
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(RAJESH BHARDWAJ)
JUDGE

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