



CRM-M-50651-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50651-2024
Date of Decision: December 10, 2024

Jiwan Jyoti
.....Petitioner
Versus
State of Punjab
.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Rakesh Kumar, Advocate
for the petitioner.

Mr.J.S.Arora, DAG, Punjab.
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RAJESH BHARDWAJ, J.(ORAL)

1. This is the second petition filed by the petitioner under Section 439 Cr.P.C. praying for grant of regular bail in case FIR No.203 dated 13.07.2023, under Section 21(C)/29/61/85 of NDPS Act, 1985 registered at Police Station Special Task Force, District STF Wing.
2. First petition of the petitioner for the same relief has already been dismissed by this Court vide order, dated 12.08.2024 passed in CRM-M-50141-2023.
3. Succinctly the facts of the case are that on 13.07.2023, the Police party while on patrolling spotted two young persons having hair cut coming on a motorcycle. On seeing the police party, they got perplexed and tried to turn their motorcycle, however, they slipped. They were apprehended by the police party and on asking their names, they disclosed



Mohit S/o Kewal Krishan. On suspicion, they were given the offer for search. On personal search of the petitioner-accused, 50 grams of heroin was recovered from the right pocket of pant worn by petitioner. He failed to produce any licence regarding the same and thus, the FIR was registered and the petitioner was arrested on the spot. Samples were sent to the Forensic Science Laboratory and the investigation commenced. Thereafter, the petitioner approached the Ld. Judge, Special Court, Jalandhar for grant of bail, however, after hearing both the sides, the same was declined by the Learned Judge, Special Court, Jalandhar vide order dated 23.08.2023. Aggrieved by the same, the petitioner had approached this Court by filing CRM-M-50141-2023, however the same was dismissed by this Court, after hearing both the parties on 12.08.2024. Now, the petitioner is again before this Court by way of filing the present petition.

4. It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in the present case. He submits that the alleged recovery from the person of the petitioner has been allegedly effected from the pocket of his pants, however, there is no compliance of provisions of Section 50 of the NDPS Act. He submits that the recovery was effected from the petitioner in a public place, however, no independent witness from the public was joined by the police party. He submits that even otherwise as per the case of the prosecution, the weight of the contraband recovered from the petitioner is 50 grams, which falls under the non-commercial quantity, however, by adding the recovery of 260 grams, allegedly made from co-accused, the same has been made commercial quantity. It is submitted that though the petitioner is being prosecuted in



other case but he has not been prosecuted in any other case of similar nature. He further submits that co-accused of the petitioner from whose custody 260 grams of recovery was made, has already been granted regular bail by this Court vide order dated 30.09.2024 passed in CRM-M-48066-2024.

It is submitted that the petitioner is behind bars from the date of his arrest and till date the prosecution has not been able to examine all the witnesses. He further relies upon the judgment passed in 'Aarif Khan @ Aaga Khan Vs. State of Uttrakhand RCR 2018(2) 931 SC'. 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 recovery from the petitioner and co-accused is 310 grams of heroin (50 grams from the petitioner and 260 grams from the co-accused) which is commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted in the present case. He submits that as per the instructions, the petitioner is facing prosecution in one another case, however, the same is not under the NDPS Act. He submits that out of 13 prosecution witnesses only 06 have been examined as on date. He submits that in the overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

5. On hearing counsel for the parties and perusing the record, it is apparent that the recovery has been effected from the petitioner in a public place but no independent witness was joined. The recovery of 50 grams of heroin falls under the non-commercial quantity. As of now, out of 13 prosecution witnesses only 6 prosecution witnesses have been examined.



same is not for the offences under the NDPS Act.

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 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.

December 10, 2024
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |