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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-54590-2023
Date of decision : 30.05.2024

Sunil Kumar @ Sunila

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Rajeev Takkar, D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

This is the third petition filed by the petitioner praying for grant of regular bail in case FIR No.80 dated 12.05.2022, under Sections 21/22 of NDPS Act, 1985 registered at Police Station City Patti, District Tarn Taran.

Adumbrated facts of the case are that the Police party while on patrolling, reached at point Kandyala Road, Pira Sahav T-Point for checking the vehicles by conducting Special Naka Bandi. They stopped one person coming on a motorcycle who was apprehended by them. On being asked, he disclosed his name as Gurpreet Singh alias Kalu. It appeared to them that there was a heavy object wrapped around his waist. An intoxicant object was suspected and thus, he was given an offer to be searched. On receiving the non-consent memo, his search was conducted and 860 capsules were recovered from the cloth tied with his waist. The polythene kept in pocket was searched and it was found to be containing 60 grams of Heroin. Gurpreet Singh @ Kalu failed to produce any license for having these tablets and Heroin and thus, the FIR was registered against him. On the registration of FIR, samples were sent to the



FSL. Investigation commenced and on conclusion the challan was presented. During the investigation, the disclosure statement of Gurpreet Singh was recorded wherein he disclosed that he purchased these capsules and heroin from Sunil Kumar @ Sunila and Nishan Singh. Thus, the petitioner was also arrayed as an accused in the present FIR. In total 05 accused were named in the FIR. The petitioner was arrested on 23.08.2022. He approached the Additional Sessions Judge, Tarn Tarn but the same was declined. Thereafter, the petitioner approached this Court by way of filing of CRM-M-57430-2022, which was dismissed as withdrawn vide order dated 21.03.2023 and thereafter, the petitioner again approached the Court of Ld. Additional Sessions Judge, Tarn Taran but the same was declined vide its order dated 08.05.2023 (Annexure P-2). The petitioner filed the second petition being CRM-M-26511-2023, however, this was also dismissed as withdrawn vide order dated 30.05.2023. Hence, petitioner is before this Court by way of filing of third bail petition.

It has been contended by counsel for the petitioner that as per case of the prosecution, neither the petitioner is named in the FIR nor there is any recovery effected from him. He submits that co-accused, namely, Gurpreet Singh was arrested along with the alleged contraband on 12.05.2022 and it is on his disclosure, the petitioner was named in the FIR on the allegations that the contraband was purchased by him from the petitioner. He submits that the disclosure of the co-accused is no evidence and thus, the false implication of the petitioner is writ large. He submits that co-accused Gurpreet Singh made disclosure statement about two accused i.e. petitioner and one Nishan Singh which further caste the shadow on the case of the prosecution. He submits that petitioner is behind bars since the date of his arrest and there is no material progress in the trial as no witness has been examined till date. He submits that the petitioner is facing trial in one other



similar case, however, he is on bail in the same. In the circumstances, he submits that the petitioner deserves to be granted regular bail.

Per contra, learned State counsel has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner is named by the co-accused Gurpreet Singh who was arrested on the spot along with contraband. It has been submitted that the petitioner is also facing trial in other similarly situated case. He submits that the capsules recovered as per FSL report found to have contained Tramadol and total weight of the intoxicant tablets recovered from the petitioner, amounts to 46.70 mg/capsule, which falls under the category of commercial quantity. He submits that in all there are 14 prosecution witnesses, however, none has 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.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner is not named in the FIR, however, his name surfaced in the present case on the basis of disclosure statement made by co-accused Gurpreet Singh. The contraband recovered from the co-accused, namely, Gurpreet Singh, falls under the commercial category, so far Tramadol is concerned, however, the Heroin recovered from him falls under the non-commercial quantity. There is no gainsaying that the petitioner is behind bars since 23.08.2022. Till date out of 14 prosecution witnesses, no one has been examined and the petitioner has been named in the FIR only on the basis of the disclosure made by co-accused Gurpreet Singh. 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.

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.

30.05.2024
ps-I

(RAJESH BHARDWAJ)
JUDGE

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