



CRM-M-54862-2024

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

CRM-M-54862-2024

Date of Decision: 11.11.2024

Ramesh Kumar @ Tinku

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Karambir Singh Kharbanda, Advocate for the petitioner.
Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present petition praying for granting him regular bail in case FIR No.47 dated 21.07.2024, under Sections 18/27-A/61/85 of NDPS Act, 1985 (Section 29 of NDPS Act added lateron), registered at Police Station Verka, District Amritsar.
2. As per the facts of the case, on 21.07.2024, the Police party while on patrolling spotted a clean shaven person coming on Active bearing No.PB-02-EU-0494. He was stopped and on suspicion, he was given offer as per law for the search. On asking he disclosed his name as Hitesh Mehra @ Ishu. On conducting the search of the scooty, 3120 grams of opium was recovered from him. As he failed to produce any licence regarding the possession of the contraband, the FIR was registered and he was arrested on spot. During the investigation he made a disclosure statement on 25.07.2024 to the effect that the recovered opium was purchased by him from one Ranjit Singh @ Jitu. It was also disclosed that Ramesh Kumar @ Tinku (petitioner) also used to purchase opium from Hitesh Mehra @ Ishu. Hence, the petitioner was also



arrayed as an accused in the present FIR. The petitioner was arrested on 03.09.2024. He approached the Court of learned Special Court, Amritsar praying for grant of regular bail. However, after hearing both the sides, the learned Court finding no merit in the same, dismissed the bail application filed by the petitioner vide order dated 05.10.2024. Hence, the petitioner approached this Court praying for grant of bail.

3. It has been vehemently contended by counsel for the petitioner that petitioner has been falsely and frivolously implicated in this case. He submits that neither the petitioner named in the FIR nor there is any recovery effected from him. He submits that as per the case of the prosecution, the alleged contraband weighing 3120 grams of opium has been recovered from the co-accused, namely Hitesh Mehra @ Ishu. He submits that however, on 25.04.2024 four days thereafter, disclosure statement of co-accused was recorded, wherein allegations against the petitioner surfaced was to the effect that he also used to purchase the opium from him. It is submitted that only bald allegation in the disclosure statement made by the co-accused is that the petitioner is used to purchase opium from him. However, there is no recovery effected even after the disclosure statement made by the co-accused. It is submitted that the disclosure statement of the co-accused in itself is no evidence and hence, the case of the prosecution is virtually without any evidence. He submits that the petitioner has no criminal antecedent and challan already stands presented in the present case. It is further submitted that in the overall facts and circumstances of the present case, the petitioner deserves to be granted bail.

4. Learned State counsel has opposed the submissions made by



counsel for the petitioner. He has submitted that from the co-accused 3120 grams of opium has been recovered, which is a commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted in the present case. He submits that during the investigation, disclosure statement of the co-accused, would reveal that the petitioner also used to purchase opium from him. On instructions, he submits that the petitioner is not involved in any other case except the present case. He submits that the investigation is already completed and the challan has been presented.

5. Heard.

6. After hearing counsel for the parties and perusing the record, it is apparent that 3120 grams of opium was recovered from the co-accused on 21.07.2024, however, on the basis of the disclosure statement made by co-accused on 25.07.2024, the petitioner was also arrayed as an accused. Neither the petitioner was named in the FIR, nor there is any recovery made from him. The allegation against the petitioner is only to the effect that he was also one of the purchasers. The investigation is complete and challan is presented.

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.

10. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

11.11.2024		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No