

CRM-M-57050-2024

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

CRM-M-57050-2024

Date of Decision: 21.11.2024

Harbans Singh @ Bansa

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

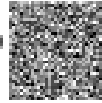
Present: Mr. Sumeet Singh Brar, Advocate for the petitioner.

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.138 dated 23.10.2023, under Sections 21(b), 27, 25, 21 (c) and 29 of NDPS Act, 1985, registered at Police Station Cantt. Bathinda.

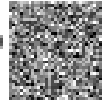
2. As per facts of the case, on 23.10.2023 Police party stopped a car in which two persons were sitting. On suspicion, they were asked to disclose their identity and they disclosed their names as Naresh Kumar @ Neshi and Harjit Singh @ Gabbar. On search of the car, 40 grams of heroin was recovered. As they failed to produce any licence for having the contraband, the FIR was registered and both the accused were arrested. During the investigation, Naresh Kumar @ Neshi made a disclosure statement about the petitioner on 21.05.2023 to the effect that they used to sell the contraband in connivance with the petitioner. Thus, the petitioner was also arrayed as an accused in the FIR. On the basis of the same, the police party laid *naka* and stopped the petitioner while travelling in a car. On the search of the car, 260 grams of heroin was recovered from him. Samples were taken and sent to the FSL. On completion of the investigation, the trial



Court framed the charges. The petitioner approached the Court of learned Judge, Special Court, Bathinda praying for grant of regular bail, however, on hearing both the sides, learned Court declined the same vide order dated 28.05.2024. Hence, the petitioner is before this Court by way of filing the present petition praying for grant of regular bail.

3. It has been vehemently contended by counsel for the petitioner that the petitioner was falsely implicated in the present case. He submits that the petitioner was involved in the FIR on the basis of the disclosure statement made by co-accused, namely, Naresh Kumar @ Neshi on 25.10.2023 and on the very same day, his arrest was shown, where, the alleged recovery of 260 grams of heroin was planted on him. He submits that the petitioner is convicted for the offence under Section 302 IPC and the Appellate Court had suspended his sentence, however, after his sentence having been suspended, he was intentionally implicated in the present case. He submits that though the petitioner has been falsely implicated in two other cases under the NDPS Act, however, the alleged recovery in those cases falls under the non-commercial quantity and the petitioner is on bail in those cases. He submits that even otherwise the alleged recovery made in the present case is marginally above the commercial quantity. He submits that the petitioner is behind bars from the date of his arrest and till date there is no progress in the trial. He thus submits that in the facts and circumstances of the 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 the petitioner was duly named by the co-accused, who was arrested on spot with 40 grams of heroin.



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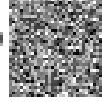
He submits that on the disclosure statement made by the co-accused, namely, Naresh Kumar @ Neshi, the petitioner was arrested while travelling in the car and 260 grams of heroin recovered. He submits that as the recovery effected from the petitioner is commercial in nature, provisions of Section 37 of NDPS Act, are attracted in this case. On instructions, he submits that out of 11 witnesses, none has been examined as on date. He further submits that in other cases, the petitioner is on bail.

5. Heard.

6. After hearing counsel for the parties and perusing the record, it is apparent that the petitioner was arrested on the disclosure statement made by co-accused. The contraband allegedly recovered from the petitioner i.e. 260 grams of heroin, is marginally above the non-commercial quantity, whereas, commercial quantity is above 250 grams of heroin. Till date no witness has been examined in the present case. In the other cases pending against the petitioner, he is on bail.

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.

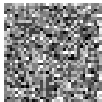
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21it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

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

21.11.2024		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No