



CRM-M-61264-2023

-1-

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

CRM-M-61264-2023

Date of Decision: 22.08.2024

Ajay Singh Pardhan

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Harpreet Singh Multani, Advocate for the petitioner.
Mr. J.S. Arora, DAG, Punjab.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present second petition praying for granting him regular bail in case FIR No.18 dated 31.01.2023, under Section 21 of NDPS Act, 1985 (Section 29 of NDPS Act, 1985 added lateron), registered at Police Station Sadar Patti, District Tarn Taran.
2. Succinctly facts of the case are that on 31.01.2023, the Police party while conducting checking of anti social elements stopped a young person coming on the motorcycle make Hero Splendor without number. On seeing the police, he took out a plastic bag from his right pocket of the trouser and threw it in the nearby wheat fields. He tried to escape from there, however, he was apprehended. On asking, he disclosed his name as Teerath Singh. The plastic bag which was thrown, was found to be containing 45 grams of heroin. He failed to produce any licence regarding the possession of the same and thus, FIR was registered against Teerath Singh. The investigation commenced and during investigation, accused Teerath Singh



disclosed about the complicity of the present petitioner Ajay Singh Pardhan from whom he allegedly purchased the contraband i.e. 45 grams of heroin. Thus, the petitioner was arrayed as an accused. On conducting the raid at his house, 255 grams of heroin was recovered from the petitioner. He was arrested on the spot on 02.02.2023. The petitioner approached the Court of learned Judge Special Court, Tarn Taran praying for grant of regular bail. However, on hearing both the sides, learned Court declined the same vide order dated 05.05.2023. Thereafter, the petitioner approached this Court by way of filing CRM-M-26274-2023 praying for regular bail, however, the same was dismissed as withdrawn on 29.05.2023. Hence, the petitioner is before this Court by way of filing the present second petition praying for grant of regular bail.

3. It has been contended by counsel for the petitioner that petitioner was falsely implicated in this case. It is submitted that as per the case of the prosecution, recovery of contraband effected from co-accused, namely, Teerath Singh, who was arrested on spot, was 45 grams of heroin and on whose disclosure statement, raid was conducted at the house of the petitioner and he was also arrested, which is not an admissible evidence. It is submitted that 255 grams of heroin was falsely planted on the petitioner shown to have been recovered in the alleged raid conducted by the Police in his house. He further submits that even otherwise, the alleged recovery shown from the petitioner is 255 grams of heroin, which is marginally above the non-commercial quantity. He submits that the petitioner is behind bars since 02.02.2023. It is submitted that the mandatory provisions of NDPS Act have not been complied with in the present case and no independent witness



was joined to substantiate the recovery planted on the petitioner. It is submitted that the charges in the present case were framed on 25.08.2023 and since then, there is no progress in the trial pending before the trial Court. He further submits that the petitioner has no criminal antecedents and thus, in the facts and circumstances of the present case, he deserves to be granted bail

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the petitioner was duly named by the co-accused who was arrested on the spot. It is submitted that the contraband recovered from the co-accused was also supplied by the petitioner and thereafter, raid was conducted at his house and 255 grams of heroin was recovered from the petitioner. He submits that the recovery effected from the petitioner falls under the commercial quantity, thus, provisions of Section 37 of the NDPS Act are attracted in this case. However, on instructions from ASI Gurmail Singh, he submits that the petitioner is not involved in any other case of similar nature. It has been submitted that out of total 16 prosecution witnesses, no witness has been examined till date.

5. Heard.

6. On hearing counsel for the parties and perusing the record, it is apparent that the petitioner was arrayed as an accused on the disclosure statement of the co-accused, namely, Teerath Singh. Though 255 grams of heroin was allegedly recovered from the petitioner, however, as argued by counsel for the petitioner, the same is marginally above the non-commercial quantity, which is 250 grams. Needless to say that the petitioner is behind



bars since 02.02.2023 and charges were framed on 25.08.2023, however, since then no witness has been examined by the trial Court. The petitioner has no criminal antecedent. Co-accused Teerath Singh is already stated to be on bail.

7. Taking into consideration the observation of 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

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.

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.'

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

(RAJESH BHARDWAJ)
JUDGE

22.08.2024

sharmila

Whether Speaking/Reasoned :
Whether Reportable :

Yes/No
Yes/No