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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M No.63096 of 2023

Sukhwinder Singh @ Sukha Petitioner

Versus

State of Punjab Respondent

2. CRM-M No.17367 of 2024

Arshdeep Singh @ Anda Petitioner

versus

State of Punjab Respondent

Date of Decision: 04.11.2024

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Anoop Singla, Advocate for
Ms. Ramandeep Kaur, Advocate
for the petitioner in CRM-M-63096-2023.

Mr. Lakhwinder Singh Sekhon, Advocate
for the petitioner in CRM-M-17367-2024.

Mr. J. S. Arora, DAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

1. This order will dispose of abovesaid two petitions as they
have arisen out of the same FIR.

2. Petitioners have approached this Court praying for the grant
of regular bail in case bearing FIR No.98, dated 14.08.2023, under
Section 22 of NDPS Act, 1985, registered at Police Station Nihal Singh
Wala, District Moga till the decision of the case.



3. Succinctly the facts of the case are that the police party on 14.08.2023 received a secret information to the effect that Arshdeep Singh @ Anda and Sukhwinder Singh @ Sukha are habitual in sale of the narcotic pills/tablets and they were waiting for the customers in Dana Mandi village Machhike and in case of naaka, they could be arrested along with the contraband. On complying the procedure, the FIR was registered and on conducting the raid, both the accused as informed were arrested. On their search, 28 loose intoxicating tablets were recovered from Sukhwinder Singh @ Sukha and 20 loose intoxicating tablets were recovered from Arshdeep Singh @ Anda. Samples of the contraband recovered were taken and sent to the FSL. As per the FSL report, salt contained in the tablets was found to be 'Etizolam' and the same weighs 2.548 grams qua Sukhwinder Singh @ Sukha and 3.4 grams qua Arshdeep Singh @ Anda. Both the accused were arrested on the spot. They approached the Court of learned Special Court, Moga praying for the grant of bail. However on hearing both the sides, the learned Special Court find no merit in the same, dismissed both the petitions filed by the petitioners vide separate orders dated 10.10.2023. Hence being aggrieved the petitioners are before this Court praying for the grant of bail.

4. Learned counsel for the petitioners have vehemently contended that the petitioners have been falsely implicated in this case. It has been submitted that admittedly the case of prosecution is based on the secret information, however the mandatory provisions of Section 42 of NDPS Act have not been complied with. It has been further submitted that the petitioner, namely, Arshdeep Singh @ Anda is not involved in any other case of similar nature whereas the petitioner, Sukhwinder Singh



@ Sukha though is involved in 02 other cases, however he is on bail in both the cases. It has been submitted that as per the FSL report, the quantity recovered from Sukhwinder Singh @ Sukha is 2.548 grams which is marginally above the commercial quantity and even from Arshdeep Singh @ Anda is 3.4 grams which is also marginally above the commercial quantity. It has further been submitted that the petitioners are behind bars from the date of their arrest, however there is no progress in the trial and thus the right of speedy trial has been vitiated. It has been submitted that in the facts and circumstances of the case, both the petitioners deserve to be granted bail.

5. *Per contra*, learned counsel for the State has opposed the submissions made by learned counsel for the petitioners. He has submitted that the quantity recovered from both the petitioners falls under the commercial quantity and thus the provisions of Section 37 of NDPS Act are attracted. He has submitted that Arshdeep Singh @ Anda has no criminal antecedents whereas Sukhwinder Singh @ Sukha is involved in 02 other cases under the NDPS Act, however he is on bail in both the cases. He has submitted that out of 10 prosecution witnesses, only 03 have been examined so far.

6. Heard.

7. On hearing learned counsel for the parties and perusing the record, it is apparent that the petitioners have been arrested in the present case on the basis of secret information. The quantity recovered from Sukhwinder Singh @ Sukha is 2.548 grams of Etizolam and from Arshdeep Singh @ Anda is 3.4 grams of Etizolam. As submitted before this Court that the same are marginally above the commercial quantity.



Arshdeep Singh @ Anda is not involved in any other case whereas Sukhwinder Singh @ Sukha though involved in 02 other cases, however he is on bail in both the cases. The petitioners are behind bars from the date of their arrest i.e. 14.08.2023. It is thus evident that the trial would take sufficient time for its conclusion.

8. After perusal of the order passed by the Hon'ble Supreme Court in Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (SC)260, this Court is of the opinion that the case of the petitioner is covered by the ratio of law 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.

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.

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.'

9. 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.
10. This Court would refrain itself from commenting anything on the merits of the case. 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 petitioners succeed in making out a case for grant of regular bail. Accordingly, both the petitions are allowed and the petitioners, namely, Sukhwinder Singh @ Sukha and Arshdeep Singh @ Anda are ordered to be released on bail on their 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.
11. Photocopy of this order be placed on the file of other connected case.

04.11.2024
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(RAJESH BHARDWAJ)
JUDGE

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