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

CRM-M-61097-2024

Date of Decision: December 10, 2024

Parwinder Singh @ Palwinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Ruhani Chadha, Advocate and
Mr.Ankur Bansal, Advocate and
Mr.Kashav Chadha, Advocate
for the petitioner.

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

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RAJESH BHARDWAJ, J.(ORAL)

1. Instant petition has been filed praying for grant of regular bail to the petitioner in case FIR No.288, dated 22.12.2022, under Sections 21 and 22 of Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the NDPS Act'), (Section 29 of the NDPS Act added later on), registered at Police Station Dharamkot, District Moga.

2. Adumbrated facts of the case are that on 22.12.2022, while on patrolling, police party spotted one lady and one man, who on seeing the police party perplexed and started walking backwards and both threw the polythene bags carrying by them on road. Thereafter, the police party apprehended them and asked about their credentials. On asking they disclosed their names as Kulwinder Singh alias Mahana and Paramjit Kaur.

Thereafter they checked the polythene bags thrown by them from one of

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which two strips of tablets and some loose tablets were found whereas in another bag heroin was found. Both failed to produce any licence for possession of the same. FIR was registered and both were arrested on spot. Samples taken were sent to the FSL. Investigation commenced and during the same, on the disclosure statements of both the accused, namely, Paramjit Kaur, and Kulwinder Singh alias Mahana, the present petitioner was arrayed as an accused. The petitioner was arrested on 22.12.2022. He approached the Court of learned Judge, Special Court, Moga, praying for grant of bail, however, after hearing both the sides, the same was declined vide order dated 29.11.2024. Aggrieved by the same, petitioner is before this Court praying for grant of regular bail.

3. It has been contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. He further submits that neither he was arrested on the spot nor named in the present FIR, however, he has been arrayed as an accused on the basis of disclosure statements made by co-accused Paramjit Kaur and Kulwinder Singh @ Mahana. It is further submitted that nothing was recovered from the petitioner and the alleged recovery made from the petitioner, i.e. 20 tablets of Etizolam weighing 2.84 grams, which is marginally higher than the commercial quantity of 2.5 grams under the NDPS Act, was planted upon him, hence bar under Section 37 of the NDPS Act will not apply in the present case because recovery was not effected from the conscious possession of the petitioner. It is further submitted that Paramjit Kaur, who is mother of the petitioner, who was arrested on the spot, has already been



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20366-2023. It is further submitted that disclosure statement in itself is not an admissible evidence. He further submits that challan has been presented in this case. It is further submitted that though petitioner is involved in one another case under the NDPS Act, however, he is on bail in the same. It is further submitted that petitioner is behind bars since the date of his arrest, i.e. 22.12.2022. He, thus, submits that in the overall facts and circumstances of the case, the petitioner deserves to be granted concession of regular bail.

4. Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that investigation is complete and challan has been filed. He further submits that the recovery made from the petitioner is 2.84 grams of Etizolam, which falls under the commercial quantity and hence, bar under Section 37 of the NDPS Act would apply. He further submits that petitioner is involved in one another case of similar nature and hence he is not entitled for grant of bail. However, he admits that co-accused, namely, Paramjit Kaur has already been granted regular bail by this Court vide order dated 21.09.2023.

5. After hearing learned counsel for the parties and perusing the record, it is evident that petitioner is behind bars since 22.12.2022. Name of the petitioner surfaced during disclosure statements of the co-accused. One of the co-accused of the petitioner has already been granted bail by this Court. Investigation is complete and challan has been filed. As held by the Hon'ble Supreme Court in **Mohd Muslim @ Hussain (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



“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.”



6. Veracity of the allegations would be assessed by the trial Court only after appreciation of evidence to be led by both the parties. However, this Court would refrain itself from commenting anything on merits of the case, at this stage. The trial of the case will take sufficiently long time. However, keeping in view the long custody of the petitioner and the bail having been granted to the co-accused, and also the observation made by Hon'ble Supreme Court in abovesaid case to the effect that 'grant of bail on ground of undue delay in trial is not fettered by Section 37', this Court finds that the petitioner deserves to be granted bail. In the overall facts and circumstances of the case, this Court finds that counsel for the petitioner succeeds in making out a case for grant of bail to the petitioner.

7. In the totality of facts and circumstances and without making any observation on merits of the case, present petition is allowed. Petitioner be enlarged on bail on his furnishing bail/surety bonds subject to the satisfaction of trial Court/Duty Magistrate concerned. Nothing stated herein shall be treated as an expression of opinion on the merits of the case.

December 10, 2024

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No