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

CRM-M-62183-2024

Date of decision : 17.12.2024

Amarjit Singh @ Cheema

.....Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vishal Khatri, Advocate for
Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. This is the third petition filed by the petitioner seeking regular bail in case FIR No.107 dated 30.05.2022, under Section 22/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. Succinctly, the facts of the case are that on 30.05.2022, the Police party while on patrolling saw a person coming on a motorcycle and on seeing the police he got perplexed and threw one plastic bag from his right pocket. On suspicion, he was stopped and on asking, he disclosed his name as Amarjit Singh @ Cheema (petitioner). It was suspected that the polythene bag which he had thrown contained some contraband and thus, an offer was given for the search of the same and on searching the polythene bag, 315 grams of intoxicant substance was recovered. The petitioner failed to produce any licence for possession of the same and thus, the FIR was registered and he was arrested on the spot. The samples were taken from the contraband and sent to the FSL. Then investigation



commenced. Thereafter, the petitioner approached the Learned Judge, Special Court, Kapurthala for grant of bail, however, after hearing both the sides, the same was declined by the Learned Judge, Special Court, Kapurthala vide order dated 01.08.2022. Aggrieved by the same, the petitioner approached this Court by way of filing of CRM-M-43061-2022 and CRM-M-43170-2023 and both petitions were dismissed as withdrawn vide orders dated 30.01.2023 and 08.11.2023, respectively. Hence, the petitioner is before this Court by way of filing of present third petition.

3. It has been vehemently contended by counsel for the petitioner that petitioner has been falsely implicated in the present case. It is submitted that the alleged recovery was made at a public place, however, no public witness was joined by the investigating agencies. He submits that there is a gross violation of mandatory provision of Section 50 of the NDPS Act. He submits that the petitioner is behind bars from the last more than 2 ½ years but till date there is no progress in the trial. He submits that the prosecution witnesses are intentionally not appearing before the trial Court just to prolong the incarceration of the petitioner and hence his right of speedy trial is being defeated. He submits that though the petitioner is involved in five more cases, however, he is already on bail in those cases. He submits that in the facts and circumstances of the present case, petitioner deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner and on instructions, has submitted that the recovery was effected from the petitioner after due compliance of statutory provisions. It is submitted that contraband recovered from the petitioner weighing 315 grams of Alprazolam which was a commercial quantity and thus, provisions of Section 37 NDPS Act,



are attracted in the present case. He submits that in the present case, out of 13 prosecution witnesses, only 01 witness has been examined as on date.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner was arrested on 30.05.2022 and the alleged contraband recovered from the petitioner was 315 grams of Alprazolam. It has been contended that no independent witness was joined and this is a violation of the mandatory provisions. Though as per custody certificate, the petitioner is involved in five more cases but he is stated to be on bai in those cases. Needless to say that as per custody certificate, the petitioner is behind bars from last 02 years, 06 months and 11 days. In the present case out of 13 prosecution witnesses, only 01 witness has been examined.

6. In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. 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 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.

20. xxxxx

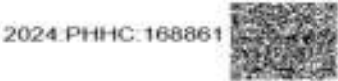
21.it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable.

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.*

7. 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. The trial of the case will take sufficiently long time. Thus, keeping in view the overall facts and circumstances of the case, this Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for grant of regular bail.

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

17.12.2024

(RAJESH BHARDWAJ)

JUDGE

ps-I

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No