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

CRM-M-4763-2025

Date of Decision: 25.02.2025

Gurpreet Singh @ Kalu

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rishu Mahajan, Advocate, for the petitioner.

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

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present fourth petition praying for granting his regular bail in case FIR No.80 dated 12.05.2022 under Sections 21/22/29 of NDPS Act, 1985, registered at Police Station City Patti, District Tarn Taran.

2. Succinctly, facts of the case are that on 12.05.2022 the Police party while on patrolling spotted a person coming on motorcycle. However, on seeing the police, he got perplexed and turned his motorcycle back. The police party could manage to apprehend him. On asking his name, he disclosed his name as Gurpreet Singh @ Kalu (petitioner). It appeared that he had wrapped some object around his waist and thus, he was suspected to be carrying some contraband. Offer of search was given to him. Search of Gurpreet Singh @ Kalu was carried out. On conducting the search, some object was found to have been wrapped around his waist and 860 capsules and another contraband heroin was also recovered, which on weighing was found to be 60 grams. He failed to produce any licence for possession of the same and hence, the FIR was registered and the petitioner was arrested on



spot. On registration of the FIR, the investigation commenced. Samples taken were sent to the FSL. The petitioner approached the Court of learned Judge, Special Court, Tarn Taran praying for grant of regular bail. However, after hearing both the sides, the learned Court finding no merit in the same, dismissed the bail application filed by the petitioner vide order dated 02.11.2022. Thereafter, the petitioner approached this Court thrice by way of filing criminal petitions, however, two were dismissed as withdrawn and third was dismissed on merits, vide different orders. Hence, the petitioner has again approached this Court praying for grant of bail by way of filing the present fourth petition.

3. It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely and frivolously implicated in the present case. He submits that as per case of the prosecution, recovery from the petitioner has been allegedly effected in a public place, however, no independent witness has been joined. He submits that recovery effected from the person of petitioner and thus, there is a violation of Section 50 of the NDPS Act. He submits that though the petitioner is prosecuted in other cases as well, however, he is on bail in those cases. He submits that the petitioner is behind bars from the last more than two years, however, the prosecution has not been able to conclude the trial. He submits that out of total 18 prosecution witnesses, only 02 witnesses have been examined till date. He submits that co-accused in this case are already on bail. He, thus, submits that in the facts and circumstances, the petitioner deserves to be granted bail.

4. Per contra, learned State counsel has opposed the submissions



made by counsel for the petitioner. He has submitted that the petitioner was arrested on spot and recovery effected from the petitioner was of 860 intoxicant tablets, which contained contraband tramadol and as per FSL report, the same weight 476 grams and thus, it falls under the commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. He has placed on record the custody certificate of the petitioner and submits that the petitioner is involved in other cases as well. On instructions from ASI Dilbagh Singh, he has submitted that out of total 18 prosecution witnesses, only 02 witnesses could be examined as on date.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner is behind bars since 12.05.2022. Though the petitioner is involved in other cases as reflected from the custody certificate, however, he is on bail in the same. Needless to say that petitioner has completed incarceration of 02 years 02 months, 08 days as on 24.02.2025, however, the prosecution has been able to examine only two witnesses. Though provisions of Section 37 of the NDPS Act, are attracted, however, there is no gainsaying that speedy trial is the right of every accused.

6. 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.

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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.’

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. 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



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counsel for the petitioner succeeds in making out a case for grant of regular bail to the petitioner.

8. 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.

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

(RAJESH BHARDWAJ)
JUDGE

25.02.2025

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Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No