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

CRM-M-5429-2024

Date of decision : 27.01.2025

Harjio Singh @ Harry**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Raj Kumar, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.32 dated 04.04.2023, under Sections 21, 22 of NDPS Act, 1985, registered at Police Station Sadar Moga, District Moga.

2. Succinctly, facts of the case are that the police party while on patrolling on 04.04.2023 spotted a car make Honda Civic parked on the corner of the T-point. One person was sitting on the driver seat who on asking the police tried to accelerate the car. However, with the help of the other fellow officials, the car was stopped. The person on asking, disclosed his name to be Harjio Singh @ Harry (petitioner). It was suspected that he was carrying some contraband in the car. On giving the offer, search of petitioner-Harjio Singh @ Harry and that of the car was carried out. On search of the gear box of the car, 25 grams of Heroin and 170 loose intoxicant tablets were found. Petitioner failed to produce any licence regarding the possession of the same and thus, FIR was registered



and petitioner was arrested on the spot. Investigation commenced, the samples taken were sent to the FSL. On receipt of the FSL report, 170 tablets recovered were found to be containing salt Etizolam and it weighed 32.81 grams. Petitioner approached the learned Judge, Special Court, Moga praying for grant of bail. However, on hearing both the sides, learned Judge, Special Court, Moga declined the same vide order dated 14.07.2023 and hence, petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has submitted that petitioner has been falsely implicated in this case. He submits that petitioner was not driving the car rather he was standing near the car and thus, without joining any independent witness, he was implicated in the present case. He submits that the recovery is effected from the car which is not owned by the petitioner. He submits that the petitioner is behind bars since 04.04.2023. It is submitted that there is violation of the mandatory provisions of Section 50 of the NDPS Act in the present case. He submits that though the petitioner is falsely implicated in two other cases under the NDPS Act however, he is on bail in those cases. He has submitted that in the facts and circumstances of the case, petitioner 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 recovery effected from the petitioner was 25 grams of Heroin and the tablets containing Etizolam weighed 32.81 grams. He submits that the recovery of the Etizolam tablets recovered falls under the category of commercial quantity and thus, provisions of Section 37 of the NDPS Act



are attracted. He submits that petitioner is involved in two other cases as well under the NDPS Act itself and thus, he is a habitual offender. He submits that out of 16 prosecution witnesses, 05 witnesses have already been examined, 03 witnesses are partially examined, 05 witnesses have given up and as on date, only 03 witnesses remains to be examined. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered from the facts and circumstances of the case that petitioner was arrested on 04.04.2023 when he was found to be in possession of Heroin weighing 25 grams and 170 tablets. The contraband containing Etizolam was found to be weighing 32.81 grams which is a commercial quantity however, the recovery has been effected from the car. As per the custody certificate, petitioner is involved in two other cases however, he is on bail in the same. As per the custody certificate, petitioner has completed incarceration of 01 year 09 months and 20 days as on 26.01.2025. As submitted, out of 16 prosecution witnesses, 05 witnesses have been given up, 05 witnesses have been examined, 03 witnesses are partially examined and only 03 witnesses remain to be examined.

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 petitioners is covered by the ratio of law laid down by the Hon'ble Supreme Court. In this 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

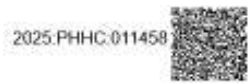


punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever 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.’

7. The veracity of the allegations would be assessed only after 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 trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

27.01.2025
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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