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

CRM-M-5661-2025

Date of decision : 23.07.2025

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

Present :- Mr. Dilpreet Singh Gandhi, Advocate for the petitioner.

Ms. Simran Gorla, A.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed for grant of regular bail in case FIR No.74 dated 29.06.2023, under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 25 of Arms Act, registered at Police Station Khilchian, District Amritsar.
2. Succinctly the facts of the case are that the Police party had led barricading near Dhaba S.K.7, G.T. Road Khilchian on 29.06.2023 and in the meanwhile, a car came towards the barricading which was signalled to be stopped, however, the driver of the car instead of stopping the car tried to turn behind. On suspicion, he was stopped and on asking, the driver disclosed his name as Gurwinder Singh @ Mota (petitioner). He was suspected to be carrying some contraband. On giving the offer, search of the person was conducted and on conducting the search, from the T-shirt worn by Gurwinder Singh @ Mota, a packet of heroin tied in yellow *parna* around his waist, weighing 500 grams, was recovered and one pistol of 32 bore was also recovered from the right pocket of his trouser. He failed to produce any license regarding possession of the contraband and weapon recovered from him, hence, the FIR was registered and the



petitioner was arrested on spot. The petitioner approached the Learned Additional Sessions Judge, Amritsar praying for grant of bail, however, finding no merit, the same was declined after hearing both the sides by Learned Additional Sessions Judge, Amritsar vide order dated 07.06.2024. Aggrieved by the same, the petitioner is before this Court by way of filing of present petition for grant of bail.

3. Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in the present case. He submits that the alleged recovery has been effected from a public place, however, no independent witness was joined by the investigating agency. He submits that the compliance of Section 50 of NDPS Act, is mandatory, however, there is violation of the same as well. He submits that the petitioner is behind bars since the date of his arrest i.e. 29.06.2023, however, there is no material progress in the trial. He submits that though the petitioner was falsely implicated in 03 more cases, however, he is on bail in those cases. He thus, submits that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

4. Per contra, learned State counsel has opposed the submissions made by the counsel for the petitioner and submits that the recovery effected from the petitioner is of 500 grams of heroin, which is a commercial quantity and thus, the provisions of Section 37 of NDPS Act, are attracted in the present case. She has produced the custody certificate of the petitioner on record and submits that the petitioner is a habitual offender. She submits on instructions that out of 21 prosecution witnesses, only 02 witnesses have been examined so far.

5. After hearing counsel for the parties and perusing the record,



it is deciphered that the petitioner was arrested in the present case on 29.06.2023. The alleged recovery is not from an article being carried by the petitioner but is from the person of the petitioner. The petitioner is behind bars since the date of his arrest and only 02 witnesses have been examined till date. As per custody certificate, the petitioner has suffered an incarceration of 02 years and 16 days as on 22.07.2025. The recovery effected in the present case falls under the category of commercial quantity and thus, provisions of Section 37 NDPS Act, are attracted.

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 conclusion of the trial and on the appreciation of evidence to be led by both the parties before the trial Court.

8. This Court would refrain itself from commenting anything on the merits of the case. 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 to the petitioner. 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.

9. In case the bail bonds are not furnished by the petitioner during the period of 07 days from today, then his further custody period after one week will not be counted in the present case.

23.07.2025
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(RAJESH BHARDWAJ)
JUDGE

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