

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

CRM-M-8749-2025

Date of Decision: 21.02.2025

Gurinder Singh @ Gurwinder Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mohit Giri, Advocate, for the petitioner.

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

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present third petition praying for granting him regular bail in case FIR No.35 dated 25.02.2023 under Sections 21/25 of NDPS Act, registered at Police Station Sadar Jagraon, District Ludhiana Rural.

2. As per facts of the case, on 25.02.2023, the Police received a secret information to the effect that Gurvinder Singh (petitioner) son of Tarsem Singh, Sukhjinder Singh son of Sukhdev Singh and Sahib Singh are indulging in selling heroin by bringing the same from other States. It was informed that they were coming on motorcycle and in case of barricading, they could be arrested. On finding the information reliable, a raiding team was constituted and *naka* was laid. As pointed out by the secret informer, a motorcycle was seen coming on which two persons were riding. They were stopped. The person driving the motorcycle disclosed his name, as Gurvinder Singh and second person riding pillion disclosed his name as Sukhjinder Singh. A bag was kept between both of them and search of the bag was conducted. On conducting search, 262 grams of heroin was recovered. They failed to produce any licence for possession of the same and

hence, they were arrested on the spot. On the registration of the FIR, the investigation commenced. Samples taken were sent to the FSL. On completion of the investigation, challan was presented and on framing of charges, the trial commenced. The petitioner approached the Court of learned Judge, Special Court, Ludhiana 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 28.04.2023. Thereafter, the petitioner approached this Court twice praying for grant of bail, however, the same were dismissed. Hence, the petitioner has again approached this Court praying for grant of bail by way of filing the present third petition.

3. It has been vehemently contended by learned counsel for the petitioner that the FIR in the present case was registered on the basis of the secret information. He submits that the alleged recovery was effected from a bag being carried by the petitioner and co-accused and thus, there is a violation of mandatory provisions of Section 42 and 50 of the NDPS Act. It is submitted that the alleged recovery of 262 grams of heroin was also marginally above the commercial quantity. He further submits that co-accused Sukhjinder Singh has already been granted bail by this Court vide order dated 05.02.2025 and the case of the petitioner is on better footing than the said co-accused. He submits that the petitioner has no criminal antecedents and thus, in the overall 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 submits that on due compliance of Sections 42 and 50 of the NDPS Act, recovery was effected from the

petitioner and the co-accused. He submits that quantity recovered in the present case is a commercial quantity, thus, provisions of Section 37 of the NDPS Act, are attracted. However, he does not dispute the fact that co-accused of the petitioner has been granted bail by this Court vide order dated 05.02.2025. He has placed on record the custody certificate of the petitioner. He further apprises the Court that out of total 13 prosecution witnesses, 05 prosecution witnesses, have been examined.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the FIR in the present case was registered on the basis of the secret information. The alleged recovery is 262 grams of heroin, which is marginal above the commercial quantity. The petitioner is behind bars since the date of his arrest and as per his custody certificate, he has completed incarceration of 01 year 11 months and 23 days as on 20.02.2025. It further reflects that he is not involved in any other case. 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. Out of total 13 prosecution witnesses, only 05 witnesses have been examined so far.

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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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.*

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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 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.

21.02.2025		(RAJESH BHARDWAJ)
sharmila		JUDGE
	Whether Speaking/Reasoned :	Yes/No
	Whether Reportable :	Yes/No