



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

CRM-M-9815-2025

Date of Decision: 25.02.2025

Raj Singh

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kuldip Singh, Advocate, for the petitioner.

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

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present second petition praying for granting his regular bail in case FIR No.134 dated 20.12.2021 under Sections 21(b) of NDPS Act, 1985 (Section 21(c) of NDPS Act, 1985 and Section 25 of the Arms Act added lateron), registered at Police Station Kalanaur, District Gurdaspur.

2. Succinctly, facts of the case are that on 20.12.2021 the Police party while on patrolling spotted two persons coming on motorcycle. However, on seeing the police, they got perplexed and tried to turn back. The police party apprehended them. On asking, the person driving the motorcycle disclosed his name as Raj Singh (petitioner), whereas, the person riding pillion disclosed his name as Jarnail Singh. They were carrying a plastic bag and thus, on suspicion, they were given offer to be searched. On search of the bag, 20 grams of heroin was recovered. Both of them failed to produce any licence regarding possession of the same and hence, the FIR was registered for illegally carrying 20 grams of heroin. Both the accused were arrested on spot. During the investigation, disclosure statements of



both the accused were recorded, wherein, they confessed about their links with Pakistani smugglers. On the basis of the disclosure statements, on 24.12.2021, SI Balbir Singh alongwith police party reached at Jalalabad alongwith the accused persons where officials of BSF according to exchange of letters between them, two pistol ZIGANA alongwith 4 magazines, one parcel of heroin containing 1005 grams net weight 965 grams were recovered. Thus, the petitioners alongwith the co-accused were prosecuted. The petitioner approached the Court of learned Judge, Special Court, Gurdaspur 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 01.09.2022. Thereafter, the petitioner earlier approached this Court by way of filing CRM-M-46256-2022, however, the same were dismissed as withdrawn vide order dated 06.12.2022. Hence, the petitioner has again approached this Court praying for grant of bail by way of filing the present second 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 admittedly, the FIR in the present case was registered against the petitioner and the co-accused for the alleged recovery of 20 grams of heroin, however, thereafter, on the basis of the disclosure statements, another contraband weighing 965 grams of heroin was planted on them alongwith the weapons. He submits that no independent witness was joined by the Investigating Agency. It is further submitted that there is violation of Section 50 of the NDPS Act. To buttress his arguments, he submits that similarly situated co-accused has been granted bail by Hon'ble



Supreme Court vide order dated 03.02.2025. He submits that prosecution has not been able to conclude the trial till date, whereas, the petitioner is behind bars from the last more than three years. He submits that though the petitioner was prosecuted in one more case under the NDPS Act, however, he has been acquitted in the same. 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 though initially 20 grams of heroin was recovered from the pocket of the petitioner, however, thereafter, on the disclosure statement, 965 grams of heroin, which is commercial quantity alongwith weapons, was also recovered from the petitioner. However, he does not dispute the fact that the similarly situated co-accused of the petitioner has been granted bail by Hon'ble Supreme Court. He has placed on record the custody certificate of the petitioner. On instructions, he has submitted that out of total 16 prosecution witnesses, 08 witnesses could be examined as on date.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner was arrested in this case on 20.12.2021. The case in hand originally belongs to recovery of 20 grams of heroin which is non-commercial quantity. However, thereafter on the disclosure statement made by the petitioner and the co-accused, the Investigating Agency recovered another 965 grams of heroin. It is admitted that co-accused has been enlarged on bail by Hon'ble Supreme Court vide order dated 03.02.2025 passed in Special Leave to Appeal (Crl) No.14867-2024. Needless to say that petitioner has completed incarceration of 03 years 02



months as on 24.02.2025, however, the prosecution has been able to examine only eight 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.

20 xxxxx

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.

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. 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.

(RAJESH BHARDWAJ)
JUDGE

25.02.2025

sharmila

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