

2025:PHHC:062312



S. No.254

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

**CRM-M-16699 of 2025
Date of Decision:12.05.2025**

Kamal Krishan

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

1. Petitioner has approached this Court by way of present petition praying for granting regular bail in a case FIR No.94 dated 09.03.2024 under Sections 22 and 29-61/85 of the NDPS Act, 1985, at Police Station City Barnala, District Barnala.

2. Succinctly, the facts of the case are that on 09.03.2024, the Police party while on patrolling received a secret information to the effect that Vijay Kumar, Raju Singh, Darshan Singh @ Vicky and Jaswinder Singh @ Bhinder were involved in selling intoxicating tablets and they were waiting at Anaj Mandi, while standing nearby the trucks parked under the shed constructed at Anaj Mandi. If the raid is conducted, they could be arrested along with the contraband. On finding the information reliable, a raiding team was constituted and the place as disclosed was raided. All the four persons as disclosed above, were found present. On suspicion, they were given offer for search and on conducting the search of the bag, 410 intoxicating tablets were recovered from them. They failed to produce any licence regarding the possession of the same and thus were arrested on spot. The sample of the tablets was taken and then sent to the FSL. On receiving the FSL report, it was found to be containing 52.48 grams of Etizolam. On

completion of investigation, the challan was presented and on framing of the charges, trial commenced. During investigation, the disclosure statement of the co-accused was recorded on 11.03.2024, and complicity of the petitioner was also mentioned and thus he was also arrayed as an accused on 11.03.2024. Subsequently, on completion of investigation, he was arrested on 11.07.2024. He approached the learned Special Court, Barnala, praying for the grant of bail, however, on hearing of both the sides, the same was declined on 22.07.2024. Being aggrieved, the petitioner approached earlier this Court by filing CRM-M-36369 of 2024 and the same was dismissed as withdrawn vide order dated 17.09.2024. Hence, the petitioner is before this Court by way of filing the present second petition.

3. Learned Senior Counsel for the petitioner has submitted that neither the petitioner is named in the FIR nor there is any recovery has been effected from him. However, the alleged 410 Etizolam tablets had been recovered from the arrested four accused who were arrested on 09.03.2024. He submitted that name of the petitioner has surfaced in the disclosure statement which is not even an admissible evidence. He submits that the petitioner has no criminal antecedents nor has been involved in any other criminal activity. He has submitted that in the facts and circumstances, the further incarceration of the petitioner is not warranted and thus he deserves to be granted bail.

4. Learned counsel for the State, however, has opposed. He submits that recovery effected from the co-accused as per the FSL report being 52.48 grams of Etizolam which is a commercial quantity, thus the provisions of Section 37 of the NDPS Act are attracted. He submits that out of 18 prosecution witnesses, only 07 witnesses remains to be examined. He has placed on record the custody certificate of the petitioner.

5. After hearing learned counsel for the parties, it is inferred that the FIR in the present case has been recorded on the basis of secret information and the name of the petitioner though was neither named in the secret information nor any recovery was effected from him. However, he was arrayed as an accused on the basis of the disclosure statement of the co-accused made on 11.03.2024,



hence, he was arrested on 11.07.2024. Out of 18, only 07 prosecution witnesses remain to be examined. Custody certificate would show that the petitioner is behind bars from last 09 months and 27 days as on 09.05.2025 and reflects that he has no criminal antecedents.

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 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.

May 12, 2025
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(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No