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

CRM-M-17759-2025

Date of decision : 21.05.2025

Vijay Kumar @ Gavy @ Gyani**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Vikram Satpal Anand, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

1. This is the fourth petition that has been made for grant of regular bail to the petitioner in case FIR No.31 dated 17.04.2021, under Sections 392, 395, 384 of IPC (Sections 511, 465, 467, 468, 471 and 120-B of IPC added later on) and Sections 21,22,29 of NDPS Act, registered at Police Station Sadar Kurali, District SAS Nagar.
2. As per the case of the prosecution, on 17.04.2021, the police received a secret information to the effect that Samuel S/o Tarsem, Gavi @ Vijay S/o Nirvail Singh and others are gangsters who were operating in different states and have committed the offence of murder, decoity, extortion and drug smuggling. It was informed that in connivance with their accomplices they have organized a criminal gang for extorting the money through net calling. They snatched the vehicle on gun point and used the same for smuggling of heroin and synthetic drugs. They also had relationship with illegal arm dealers in UP, Jharkhand and after purchasing it from there, they supplied these arms to the Gangsters in Punjab. It was



informed that this gang is now operating in the area of Singhpura Kurali, and if the raid is conducted, they could be arrested. On receiving the secret information, FIR was registered and the raiding party was constituted. The investigation commenced. During investigation, the petitioner was arrested from Jharkhand on 26.04.2021. On completion of investigation, challan was presented and on framing of charges, trial Court commenced with the trial. The petitioner approached the Ld. Judge, Special Court, SAS Nagar Mohali for grant of bail, however, after hearing both the sides, the same was declined by the Learned Judge, Special Court, SAS Nagar Mohali vide order dated 16.07.2021. Aggrieved by the same, the petitioner earlier approached this Court thrice by way of filing of CRM-M-42045-2021, CRM-M-47608-2023 and CRM-M-50365-2024, which were dismissed as withdrawn by this Court. Hence, petitioner is before this Court by way of filing the present fourth petition.

3. It has been vehemently contended by counsel for the petitioner that the FIR in the present case was lodged on the basis of secret information. He submits that the petitioner was not even present in Punjab and he was illegally arrested from Jharkhand. He submits that after arresting the petitioner, his confessional statement was recorded and on the basis of the same, 1 kg of heroin, 02 pistols, 08 live cartridges were planted upon him. He submits that the landlord of the flat, from which the alleged recovery was effected, has been examined before the trial Court and she has deposed that she does not even know the petitioner. He submits that the co-accused are already enlarged on bail. It is submitted that the petitioner is behind bars since the date of his arrest and he has suffered an incarceration of 04 years and 11 days but the trial is not concluded yet. He submits that the petitioner is prosecuted in 12 other



cases, however, in some of the cases he has been acquitted and in rest of the cases he is on bail/discharged. He submits that as the petitioner has been implicated in other cases, it is on account of the same, he has been roped in the present case falsely. He submits that even otherwise the material witnesses already stand examined and despite his long custody the trial is not being concluded. He thus, submits that in the facts and circumstances of the present case, he deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that the petitioner is a habitual offender who is involved in 12 other cases. She has further submitted that recovered contraband i.e. 1 kg of heroin falls under the category of commercial quantity and thus, provisions of Section 37 of NDPS Act, are attracted. She, on instructions, has submitted that out of 49 prosecution witnesses, 33 witnesses have been examined and 08 witnesses remains to be examined. She has produced the custody certificate of the petitioner.

5. On hearing counsel for the parties and perusing the record, it is deciphered that the present FIR was lodged on the basis of secret information. The petitioner was arrested on 26.04.2021 and thereafter, on the basis of his confessional statement, recovery of 1 kg heroin and illegal arms had been allegedly recovered. As submitted by learned counsel for the petitioner, the landlord has been examined and she has deposed that she does not know the petitioner. The perusal of the custody certificate shows that the petitioner has suffered incarceration of 04 years and 11 days as on 20.05.2025. Though, he is prosecuted in other cases but perusal of the custody certificate would show that in many cases he has been acquitted and in rest of the cases he is on bail or discharged. There is no



gain saying that every accused, *de hors* his antecedents, has a fundamental right of speedy trial.

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

8. The Hon'ble Supreme Court in *Ashim @ Asim Kumar Haranath Bhattacharya @ Asim Harinath Bhattacharya @ Aseem Kumar Bhattacharya Vs. National Investigation Agency, 2022(1) SCC 695* has held as under:

“Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice.”

9. 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 Court/Duty Magistrate.



10. The learned Court is directed to ensure that two local sureties are furnished by the petitioner at the time of submission of bail/surety bonds. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

21.05.2025
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(RAJESH BHARDWAJ)
JUDGE

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