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

CRM-M-24890-2024

Date of decision : 25.03.2025

Karnail Singh @ Gurmej Singh @ Joji**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Abhaysher Singh, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab assisted by
Insp. Satinderdeep Singh.

RAJESH BHARDWAJ, J. (Oral)

1. Petitioner has approached this Court by way of filing the present petition praying for grant of regular bail to him in case FIR No.34 dated 30.09.2023, under Sections 21(c), 27-A, 29 of the NDPS Act, registered at Police Station State Special Operations Cell Fazilka, District Intelligence Wing (CID).

2. Succinctly facts of the case are that the police party while on patrolling on 30.09.2023 received a secret information that Karnail Singh @ Gurmej Singh @ Joji (petitioner), Wazir Singh and Bohar Singh were indulging in smuggling of Heroin and they were having relations with Pakistani smugglers. It was informed that they got the Heroin from the Pakistani smugglers and used to supply to Indian smugglers. It was also informed that they are coming on a motorcycle and if the barricading is laid, they could be arrested along with the contraband. On receiving the information, FIR was registered and the barricading was laid by the police. On lying the barricading, the persons as disclosed were seen



coming on a motorcycle and they were stopped. On asking, they disclosed their names as informed in the secret information. On conducting the search of co-accused Bohar Singh, 254 grams of Heroin was recovered whereas from the search of the petitioner, 400 grams of Heroin was recovered. They failed to produce any license regarding possession of the same and thus, were arrested on the spot. On registration of the FIR, investigation commenced. Petitioner approached the learned Judge, Special Court, Fazilka praying for grant of bail. However, after hearing counsel for the parties, the same was declined vide order dated 12.02.2024. Hence, petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has contended that the petitioner has been falsely implicated in this case. He submits that as per case of the prosecution, the FIR was registered on the basis of secret information however, there is violation of mandatory provisions of Section 42 of the NDPS Act. He further submits that there is a violation of mandatory provisions of Section 50 of the NDPS Act as well. To buttress his arguments, he submits that the similarly situated co-accused Bohar Singh who was arrested on the spot has already been enlarged on bail vide order dated 03.04.2024 passed in CRM-M-11610-2024. He submits that though the petitioner is involved in three other cases however, he has been acquitted in FIR No.103 dated 06.05.2016, under Sections 382/341/120-B/148/149 of IPC, registered at Police Station Sadar Ferozepur and he is on bail in rest of the two cases. He submits that the petitioner is behind bars since the date of his arrest however, prosecution has not been able to conclude the trial till date and thus, in the overall facts and circumstances



of the case, petitioner deserves to be granted bail.

4. Learned State counsel has opposed the submissions made by counsel for the petitioner. He, on instructions from Inspector Satinderdeep Singh, submits that petitioner was specifically named in the secret information and thus, by due compliance of Sections 42 and 50 of the NDPS Act, the search of the petitioner and the co-accused was conducted. The contraband recovered from the petitioner was found to be 400 grams of Heroin which falls under the commercial quantity and thus, provisions of Section 37 of the NDPS Act are attracted. He has placed on record the custody certificate of the petitioner. He on instructions submits that out of 13 prosecution witnesses, 06 witnesses have been examined so far.

5. After hearing counsel for the parties and perusing the record, it is apparent that the FIR in the present case has been registered on the basis of secret information received by the investigating agencies. Two of the accused were allegedly arrested on the spot. Co-accused Bohar Singh from whom 254 grams of Heroin was recovered has been granted regular bail. Needless to say that the contraband recovered from the petitioner is also falls within the commercial quantity. Custody certificate produced would show that petitioner has suffered incarceration of 01 year 05 months 21 days. Though there were 03 other cases registered against the petitioner, however, in one case, he has been acquitted and in other two cases, he is on bail. It has been observed time and again that the speedy trial is the right of every accused.

6. 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.”

7. 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 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.’

8. 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. 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 trial Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

25.03.2025
m.sharma

(RAJESH BHARDWAJ)
JUDGE

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