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

**CRM-M No.24823 of 2025
Date of decision : 13.05.2025**

Sahil**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Umesh Sharma, Advocate
for the petitioner.

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

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed praying for the grant of regular bail to the petitioner in case bearing FIR No.78, dated 29.07.2023, under Sections 22, 29 of Narcotic Drugs & Psychotropic Substances Act (for short 'NDPS Act'), 1985, registered at Police Station Haryana, District Hoshiarpur (Annexure P-1) during the pendency of trial.

2. Succinctly the facts of the case are that the police party was on patrolling on 29.07.2023. They spotted 02 young persons coming on Activa scooter. On seeing the police, they got perplexed and tried to turn back their scooter. The person sitting pillion took out the polythene envelop from the right pocket of his pant and threw on the road. However the police party apprehended them and on asking, the driver of the scooter,



disclosed his name as Sahil (petitioner) whereas the pillion rider disclosed his name as Gaurav. It was suspected that there was some contraband in the polythene bag thrown by them. The same was searched and on conducting the search of the same, 265 grams of heroin was recovered. They failed to produce any licence regarding the conscious possession of the same and thus the FIR was registered and both were arrested on the spot. On registration of the FIR, the investigation commenced. The samples taken were sent to the FSL. The petitioner approached the Court of learned Judge, Special Court, Hoshiarpur twice praying for the grant of bail. However, after hearing both the sides finding no merit in the same, the learned Judge, Special Court, Hoshiarpur declined both the petitions filed by the petitioner vide orders dated 12.10.2023 & 29.04.2025, respectively. Hence being aggrieved, the petitioner is before this Court by way of filing the present petition praying for the grant of regular bail.

3. Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely implicated in the present case. He has submitted that the alleged recovery has been effected from the public place, however there is no independent witness has been joined. He has submitted that there is a violation of mandatory provisions of Section 50 of NDPS Act in effecting the recovery. He has submitted that the petitioner is behind bars since the date of his arrest, i.e. 29.07.2023, however there is no material progress in the trial. He has submitted that the petitioner though has been prosecuted in one more criminal case but not under the NDPS Act. He has submitted that the commercial quantity is about 250 grams whereas the alleged recovery is 265 grams, which is



marginally above the commercial quantity. He has submitted that in the facts and circumstances of the case, the petitioner deserves to be granted bail.

4. *Per contra*, learned counsel for the State has opposed the submissions made by counsel for the petitioner. He, on instructions, has submitted that on due compliance of mandatory provisions of Section 50 of NDPS Act, the recovery of 265 grams of heroin was effected. He has submitted that the contraband recovered is 265 grams of heroin, which is a commercial quantity and thus, the provisions of Section 37 of NDPS Act are attracted in this case. He has submitted that out of 10 prosecution witnesses, 06 witnesses still remain to be examined. He has produced the custody certificate of the petitioner dated 12.05.2025 today in the Court.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is inferred that the recovery in the present case is allegedly 265 grams of heroin, which is marginally above the commercial quantity. The petitioner is behind bars since the date of his arrest, i.e. 29.07.2023. Custody certificate produced by learned State counsel would show that the petitioner has suffered incarceration of 01 year, 03 months and 15 days as on 12.05.2025. It further reflects that the petitioner was sentenced RI for 50 days by the learned Additional Chief Judicial Magistrate, Hoshiarpur in FIR No.147, dated 02.10.2019, under Sections 379-B, 341, 411, 34 of IPC, registered at Police Station Bullowal vide order dated 06.10.2023 and he has undergone that sentence. The petitioner has no antecedents regarding his involvement in any other case under the NDPS Act except



the present case.

7. After perusal of the order passed by the Hon'ble Supreme Court in *Mohd Muslim @ Hussain vs. State (NCT of Delhi), 2023 Live Law (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.'

8. 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.

9. This Court would refrain itself from commenting anything on the merits of the case. Keeping in view the arguments raised by both the sides and perusing the record, the Court is of the opinion that learned counsel for the petitioner succeeds in making out a case for the grant of 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. However, if the petitioner does not furnish the bail bonds within seven days from today, then his further custody period after one week will not be counted in this case.

(RAJESH BHARDWAJ)
JUDGE

13.05.2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No