



CRM-M-30101-2024

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

CRM-M-30101-2024 (O&M)

Date of Decision: 01.04.2025

Shyam Sunder

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Anmol Dutt Sharma, Advocate, for the petitioner.

Mr. Vijesh Sharma, Addl. AG, Haryana.

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present petition praying for granting regular bail in case FIR No.291 dated 23.09.2023 under Section 22(c) of NDPS Act, 1985, registered at Police Station Brara, District Ambala.

2. Succinctly, facts of the case are that on 23.09.2023, the police received a secret information to the effect that Shyam Sunder @ Shyam (petitioner) was involved in business of selling narcotic capsules and narcotic pills and it was informed that he was present near Ugala bridge and waiting for the customers. In case of raid, he could be arrested alongwith the contraband. On receiving the information, the raiding team was constituted and raiding party reached at the place disclosed. They spotted a person and on the pointing out of the secret informer, he was arrested. On asking, he disclosed his name as Shyam Sunder @ Shyam. He was suspected to be carrying some contraband in the polythene bag, which he was holding. After giving offer for the personal search and that of the polythene bag, search was conducted and total 256 capsules of Parvion Spas weighing 148.16 grams and 6360 tablets of Lomotil weighing 254.4 grams were recovered from



him. He failed to produce any licence regarding possession of the same and thus, the FIR was registered and he was arrested on the spot. Samples taken were sent to the FSL. On registration of the FIR, the investigation commenced and the challan was presented. On framing of charges, the trial commenced. The petitioner approached the Court of learned Judge, Special Court, Ambala 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 08.04.2024. Hence, the petitioner has approached this Court praying for grant of bail by way of filing the present petition. As the petitioner is 70 years of age, he filed an application alongwith the medical report for grant of interim bail on account of precarious condition of his health and hence, the same was granted to him on account of his health condition.

3. It has been contended by learned counsel for the petitioner that even on merits the petitioner deserves to be granted bail. He submits that the petitioner has been roped in the present case on the basis of the secret information. He submits that there is violation of mandatory provisions of Section 42 of the NDPS Act. He further submits that the alleged recovery has been effected from a public place, but independent witness has not been joined. He submits that personal search of the petitioner was also carried out and thus, there is violation of Section 50 of the NDPS Act as well. He submits that recovery as alleged to have been effected is totally a planted recovery. He submits that the petitioner has no criminal antecedents, as he has never been involved in any other case. It is submitted that the petitioner has completed incarceration of more than one year, but there is no progress in



the trial. He submits that from the status report filed, it is apparent that health condition of the petitioner was precarious and he is still under treatment and there is no improvement in his health. He, thus, submits that on merits as well as on the basis of health condition of the petitioner, he 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 on due compliance of Sections 42 and 50 of the NDPS Act, recovery of 256 capsules of Parvion Spas and 6360 tablets of Lomotil were effected from the petitioner. He submits that as per the FSL report, the recovered contraband falls under the commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. It is submitted that out of total 15 prosecution witnesses, no witness has been examined so far. He has placed on record the custody certificate of the petitioner.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the present FIR has been lodged on the basis of the secret information. Recovery allegedly effected from the petitioner is commercial one. Medical report produced by the State would show that health condition of the petitioner is precarious and he is still undergoing treatment. The petitioner is stated to be 70 years of age. Out of total 15 prosecution witnesses, no witness has been examined till date. The custody certificate would reflect that he has suffered incarceration of 01 year 02 months & 22 days as on 17.12.2024. It further reflects that the petitioner 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. Thus, keeping in view the arguments raised by both the sides and also the medical condition and affirmed age of the petitioner, 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. There is nothing on record to suggest that the petitioner has ever misused the concession of interim bail granted to him vide order dated 16.12.2024.

8. Accordingly, the present petition is allowed and the order dated 16.12.2024 is made absolute during the trial of the present case and the bail/surety bonds already furnished by the petitioner in pursuance to the order dated 16.12.2024 shall be kept alive till the final disposal of the case by the trial Court and the petitioner is not required to furnish any fresh bail/surety bonds.

9. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

01.04.2025

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Whether Speaking/Reasoned :
Whether Reportable

:
:

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No