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

CRM-M-31241-2024

Date of Decision: 01.04.2025

Ashish Malhotra

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. B.D.Sharma, Advocate, for the petitioner.

Mr. Tanuj Sharma, AAG, 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.700 dated 25.12.2023 under Sections 22(c) and 29 of NDPS Act, 1985, registered at Police Station Ambala City, District Ambala.

2. Succinctly, facts of the case are that on 25.12.2023, the police received a secret information to the effect that Ashish Malhotra (petitioner) was involved in business of selling intoxicating capsules and he was sitting in his vehicle bearing No.HR-01-AW-8406 near old Shiv Temple for selling the intoxicating capsules. 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 where a person was found sitting in a car. On enquiry, he revealed his name as Ashish Malhotra. He was suspected to be carrying some intoxicating capsules and thus, was given offer for search. On conducting search of the pocket of his blazer worn by him, total 528 intoxicating capsules weighing 288.26 grams of Tramadol. recovered. 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 Additional Sessions Judge, 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 22.05.2024. Hence, the petitioner has approached this Court praying for grant of bail by way of filing the present petition.

3. It has been vehemently contended by learned counsel for the petitioner that the petitioner has been falsely implicated in this case. He submits that the FIR has been registered on the basis of the secret information. He submits that the alleged recovery has been effected from a public place, however, no independent witness has been joined and thus, there is violation of Section 42 of the NDPS Act. He submits that the story of the prosecution is also unbelievable as heavy quantity of contraband could not be kept in a pocket as alleged by the prosecution. He submits that the petitioner has never been involved in any other case of the similar nature. He submits that the petitioner is behind bars since the date of his arrest, however, there is no progress in the trial. He, thus, submits that the petitioner 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 in all 528 capsules were recovered from the conscious possession of the petitioner, which as per FSL report found to be 288.26 grams of Tramadol which is a commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. It is submitted that out of total 19 prosecution witnesses, 02 witness have



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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. The custody certificate would reflect that he has suffered incarceration of 01 year 03 months as on 27.03.2025. It further reflects that the petitioner faced prosecution in one more case, however, he has already been acquitted in the same.

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.

(RAJESH BHARDWAJ)
JUDGE

01.04.2025
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No