



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

CRM-M-32546-2024

Date of Decision: 12.03.2025

Gaurav Kumar @ Guru

..... Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Arora, Advocate, for the petitioner.

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

Rajesh Bhardwaj, J. (ORAL)

1. Petitioner has approached this Court by way of present petition praying for granting regular bail in case FIR No.112 dated 28.08.2019 under Section 22 of NDPS Act, 1985, registered at Police Station Maqsudan, District Jalandhar Rural.

2. Succinctly, facts of the case are that on 28.08.2019 the Police party while on patrolling spotted two clean shaven boys coming from Bidhipur side. On seeing the Police, they got perplexed and turned back. They were holding heavy polythene bags in their hands. On suspicion, they were stopped and on asking one boy disclosed his name as Gaurav Kumar @ Guru (petitioner) and another boy disclosed his name as Sunil @ Sheela. On suspicion, they were given offer to be searched and on conducting search of the bag holding by the petitioner, 20 injections of Avil 10 and 20 injections of Buprenorphine Injection IP 2 ml and from second person Sunil @ Sheela, 40 strips of intoxicant tablets each containing 10 tablets total 400 tablets were recovered. They failed to produce any licence regarding possession of



the same and thus, the FIR was registered and they were arrested on the spot. On registration of the FIR, the investigation commenced. Samples taken were sent to the FSL. The petitioner approached the Court of learned Additional Sessions Judge, Jalandhar 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 19.06.2024. 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 and frivolously implicated in the present case. He submits that as per case of the prosecution, recovery from the petitioner has been allegedly effected at a public place, however, no independent witness has been joined. He submits that recovery effected from the person of petitioner and thus, there is a violation of Section 50 of the NDPS Act. He submits that the petitioner is behind bars since the date of his arrest and hence, he has suffered incarceration of 5½ years, but the prosecution has not been able to conclude the trial and thus, his fundamental right of speedy trial has been miserably defeated. He submits that though the petitioner is prosecuted in other cases as well, however, he is on bail in those cases. He submits that the petitioner is behind bars from the last more than two years, however, the prosecution has not been able to conclude the trial. He submits that co-accused in this case is already on bail. He, thus, submits that in the facts and circumstances, 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 after due compliance of mandatory provisions of NDPS Act, recovery from the petitioner was effected. He submits that recovery effected from the petitioner falls under the commercial quantity and hence, provisions of Section 37 of the NDPS Act are attracted. He submits that recovery effected from the co-accused was non-commercial in quantity and thus, the case of the petitioner is distinguishable from that of the co-accused. He has placed on record the custody certificate of the petitioner and submits that the petitioner is involved in other cases as well. On instructions from ASI Niranjan Singh, he has submitted that out of total 10 prosecution witnesses, only 01 witness could be examined as on date.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the petitioner is behind bars since 28.08.2019. Though the petitioner is involved in other cases as reflected in the custody certificate, however, he is on bail in the same. Needless to say that petitioner has completed incarceration of 05 years 06 months & 10 days as on 10.03.2025, however, the prosecution has been able to examine only one witness. Though provisions of Section 37 of the NDPS Act, are attracted, however, there is no gainsaying that speedy trial is the fundamental right of every accused.

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 trial of the case is likely to take sufficient time. Speedy trial



is the right of every accused. 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.”

8. The Hon'ble Supreme Court in a recent decision dated 03.07.2024 in Javed Gulam Nabi Shaikh Vs. State of Maharashtra, Criminal Appeal No. 2787 of 2024, has held that howsoever serious a crime may be, an accused has the right to speedy trial under the Constitution of India. Though the petitioner is involved in other cases also, however, the same cannot be a ground for non-consideration of his bail in the present case, specially when co-accused is already on bail.

9. 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.



10. 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.
11. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

12.03.2025
sharmila

(RAJESH BHARDWAJ)
JUDGE

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