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

CRM-M-35817-2024

Date of decision : 13.01.2025

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

Present :- Mr. Mikhail Kad, Advocate
for the petitioner.

Mr. J.S. Arora, D.A.G., Punjab.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail in case FIR No.98 dated 08.11.2023, under Sections 18/61 of NDPS Act, 1985 registered at Police Station Sadar Rajpura, District Patiala.

2. Succinctly the facts of the case are that the police party while on patrolling on 08.11.2023, saw a young person having black coloured bag marked HP around his neck, coming from the front side. He was asked to disclose his name on which he disclosed his name as Pawan Kumar. The offer to search the bag being carried by him, on suspicion, was given to him under Section 50 of the NDPS Act and on search, 2kg 600 grams opium was found in the bag which was being carried by him. He failed to produce any licence for possession of the contraband and thus, FIR was registered and the petitioner was arrested on the spot. Samples were taken and sent to the Forensic Science Laboratory. On completion of the investigation, challan was presented, charges framed



and trial commenced. Thereafter, the petitioner approached the Ld. Judge, Special Court, Patiala for grant of bail, however, after hearing both the sides, the same was declined by the Judge, Special Court, Patiala vide order dated 13.05.2024. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. It has been vehemently contended by counsel for the petitioner that the petitioner has been falsely implicated in the present case wherein the alleged recovery of 2kg 600 grams opium was planted upon him. He submits that the alleged recovery was effected from the petitioner at a public place, however, no independent witness from the public was joined by the police party. He submits that the alleged recovery effected from the petitioner is 2 kg 600 grams opium which is marginally above the 2.5 kg and is a commercial quantity. He submits that the petitioner has no criminal antecedents as he was never involved in the cases of similar nature. Though the petitioner is involved in another FIR under the Excise Act, however, he is on bail in that case. He submits that the petitioner is behind bars from last 01 year, however, there is no progress in the trial. He submits that thus, in the facts and circumstances of the present case, he deserves to be granted regular bail.

4. Per contra, learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that on compliance of the mandatory provisions of the Act, the recovery of commercial quantity was effected from the petitioner. It is submitted that on receiving the FSL report, it was duly proved that the recovered contraband was opium. He submits that charges are framed, however, out of 10 prosecution witnesses, none has been examined. He has produced the custody certificate of the petitioner in the Court. He submits that in the



overall facts and circumstances of the case, petitioner does not deserve to be granted bail.

5. On hearing counsel for the parties and perusing the record, it is deciphered that the petitioner is behind bars from last 01 year, 02 months and 02 days. Though the petitioner is involved in one more case under the Excise Act, however, he is on bail in the said case. The alleged recovery effected from the petitioner is 02 kg 600 grams opium. The petitioner is not involved in any other case under the NDPS Act except the present one. There is no gain saying that speedy trial is the right of every accused, however, out of 10 prosecution witnesses, none is examined till date.

6. In view of the facts and circumstances of the present case, this Court cannot ignore the fact that the speedy trial is the fundamental right of every accused. 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.

20. xxxxx

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.

22. xxxxx

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. The trial of the case will take sufficiently long time and the co-accused of the petitioner has already been granted the concession of regular bail by this Court. 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 Court/Duty Magistrate. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

13.01.2025
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(RAJESH BHARDWAJ)
JUDGE

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