



217 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36919-2024

Date of decision : 27.02.2025

Sadhu Khara @ Sadhu Bakhara

.....Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Anas Ahmed, Advocate
for the petitioner.

Mr. Vijesh Sharma, Addl. AG, Haryana assisted by
ASI Dharam Singh.

RAJESH BHARDWAJ, J. (Oral)

1. Present petition has been filed by the petitioner praying for grant of regular bail to him in case FIR No.43 dated 05.02.2023, under Sections 29(B)(ii)(C) of NDPS Act (Section 29(1) added later on), registered at Police Station Furrukh Nagar, District Gurugram.

2. Succinctly, facts of the case are that the police party on 05.02.2023 received a secret information to the effect that Ashok Kumar @ Guddu son of Shiv Shankar Prasad is involved in selling intoxicant Ganja and would be coming from Palwal side on KMP Expressway in Vehicle No.HR 63C 8806 Open Trola and in case of barricade, he could be arrested along with the contraband. On receiving the information, the police party after sending notice under Section 42 of the NDPS Act laid the barricading and as per information given by the secret informer, vehicle as disclosed was stopped and driver of the same disclosed his name to be Ashok Kumar @ Guddu who was suspected to be carrying the contraband in the vehicle and thus, the search of the same was conducted.

On conducting the search, 14 jute sacks filled with suspicious intoxicants



in the trollea were recovered and the Ganja was found to be total weighing 285 kg. He failed to produce any license regarding possession of the same and thus, was arrested on the spot. On registration of the FIR, investigation commenced. The samples taken were sent to the FSL. During investigation, disclosure statement of Ashok Kumar @ Guddu was recorded on 10.02.2023 and the complicity of the petitioner was also *prima facie* established and he was arrayed as an accused. Petitioner was arrested on 10.02.2023. He approached the Court of learned Additional Sessions Judge, Gurugram praying for grant of bail. However, after hearing counsel for both the sides, learned Additional Sessions Judge, declined the same vide order dated 21.03.2023. Hence, being aggrieved, petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that neither the petitioner was named in the FIR nor there is any recovery effected from him. He submits that the recovery of the alleged contraband has been made from co-accused Ashok Kumar @ Guddu and the trollea from which the recovery has been made even does not belong to the petitioner. He submits that during investigation, disclosure statement of co-accused Ashok Kumar @ Guddu was recorded on 05.02.2023 wherein he disclosed that he purchased the contraband from one Ajit, resident of Visakhapatnam (Andhra Pradesh). His second disclosure statement was recorded on 10.02.2023 and it is during this second disclosure statement, he named the petitioner to be the supplier of the alleged contraband. He submits that the disclosure statement in itself is not an admissible evidence and the petitioner was never named as an accused by the co-accused in his first disclosure made. He submits that petitioner belongs



to the State of Orissa and from him recovery of Rs.1000/- was effected.

He submits that petitioner has no criminal antecedents as he has never been involved in any other case. He further submits that petitioner is behind bars from last more than 02 years but till date, prosecution has not been able to examine even half of the witnesses. He thus, submits that petitioner deserves to be granted bail.

4. Learned State counsel has opposed the submissions made by counsel for the petitioner. He on instructions from ASI Dharam Singh has submitted that the recovery effected from the co-accused is heavy quantity and thus, provisions of Section 37 of NDPS Act are attracted. It is submitted that during investigation, it has been found that petitioner was the supplier of the contraband which was the commercial quantity. He has produced the custody certificate of the petitioner. He further submits that out of 20 prosecution witnesses, only 02 witnesses have been examined as on date. It is submitted that in all there are 03 accused, out of which, one of the accused namely, Arvind Kumar is a juvenile, who is on bail whereas, petitioner and co-accused and Ashok Kumar @ Guddu are behind the bars.

5. After hearing counsel for the parties and perusing the record, it is deciphered that the case of the prosecution is based on the secret information. Petitioner was not named in the FIR and his complicity allegedly surfaced during the investigation. It is during the second disclosure statement recorded on 10.02.2023 wherein petitioner has been alleged to be the supplier of the contraband. Custody certificate produced by the State would show that petitioner is behind bars from last 02 years 12 days as on 24.02.2025. It further reflects that petitioner is not involved



in any other case.

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 petitioners is covered by the ratio of law laid down by the Hon'ble Supreme Court. In this 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.

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.

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 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. 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 trial Court/Duty Magistrate.

8. The learned Court is directed to ensure that local surety is furnished by the petitioner at the time of submission of bail/surety bonds. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

27.02.2025
m.sharma

(**RAJESH BHARDWAJ**)
JUDGE

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